FOR IMMEDIATE RELEASE:
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GOVERNOR SPITZER SIGNS EXECUTIVE ORDER TO PREVENT EMPLOYEE MISCLASSIFICATION

Establishes a Joint Enforcement Task Force to Protect Workers and Level the Playing Field

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Governor Eliot Spitzer today held a press conference with Department of Labor Commissioner Patricia Smith and labor leaders to announce a new Executive Order that creates a Joint Enforcement Task Force to address the problem of employee misclassification. The misclassification of workers occurs when an employer improperly labels an individual as an independent contractor rather than an employee, or pay workers off the books.

Misclassified employees can be deprived of numerous protections to which they are legally entitled. Businesses can use misclassification to avoid complying with laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage and overtime. Misclassification also puts law-abiding businesses at a competitive disadvantage, since they must bear the expense of providing these benefits, while those who skirt the law bear no such costs.

Effective immediately, the Executive Order will allow for greater coordination among state agencies charged with classification enforcement and create a new Joint Enforcement Task Force led by the Department of Labor. The Task Force will work to strengthen enforcement and avoid duplication of efforts by sharing relevant information, coordinating investigations and enforcement actions, and educating the business community and the public at large. The Task Force will be required to issue a report to the Governor on February 1 of each year, detailing its actions, and suggesting potential legislative or regulatory changes in this area.

"For too long State government has turned a blind eye on a growing epidemic that is keeping wages and benefits artificially low for working New Yorkers," said Governor Spitzer. "This Executive Order – a key component of my economic security agenda – protects worker rights while leveling the playing field for law abiding employers so they are not at a competitive disadvantage to employers who refuse to play by the rules as they exploit hard working New Yorkers."

Department of Labor Commissioner Patricia Smith said: "This Executive Order is another powerful and unprecedented tool for protecting the basic rights of all of the state's workers. The Joint Enforcement Task Force is assembled and ready to reverse several years of lax enforcement."

New York State AFL-CIO President Denis Hughes said: "We applaud the Governor for his

leadership on this most important issue. Today's Executive Order will go a long way toward eliminating the opportunity for unscrupulous employers to deny working men and women their statutory rights to fair pay, benefits and protections under state law. As a result, it provides legitimate, well-meaning employers with the opportunity to compete on a level playing field. This Executive Order will help to ensure that working men and women are afforded the rights, benefits and dignity their work so justly deserves."

Change to Win Executive Director, Greg Tarpinian, said: "Misclassification of workers is theft. Outlaw employers steal compensation from workers, security from their families and taxes from their communities. Law-abiding employers suffer unfair competition, and the economic standards that support the American dream for workers are threatened. All the Change to Win unions thank Governor Spitzer for his leadership in holding employers accountable."

New York City Central Labor Council President Gary La Barbera, said: "The misclassification of employees is not just a labor problem, it is an economic and human rights crisis. By misclassifying employees as independent contractors, unscrupulous employers avoid labor and employment laws, prevailing wage laws, and other legislation intended to ensure that workers are protected. The New York City labor movement applauds Governor Spitzer today for his steadfastness and commitment to protecting all workers from the exploitation of misclassification. The Central Labor Council is fully committed to embarking on an education campaign to let workers know their rights under the new classification enforcement measures and how to protect themselves."

A recent study conducted by the School of Industrial Labor Relations at Cornell University estimates that approximately 10 percent of workers reviewed from audits conducted by the Department of Labor were misclassified. In the construction industry, this number increased to 15 percent.

Members of the Task Force will include representatives from the Attorney General's Office, the Department of Taxation and Finance, the Workers' Compensation Board, the Workers' Compensation Inspector General and the New York City Comptroller's office. Each of these entities enforces different laws pertaining to misclassification of workers. Prior to the signing of this order, they did not coordinate their enforcement efforts on this issue.

The Governor first addressed this problem in a recent policy speech outlining his economic security agenda.

For more information, visit the Department of Labor's web site at www.labor.state.ny.us.

The Executive Order is attached.

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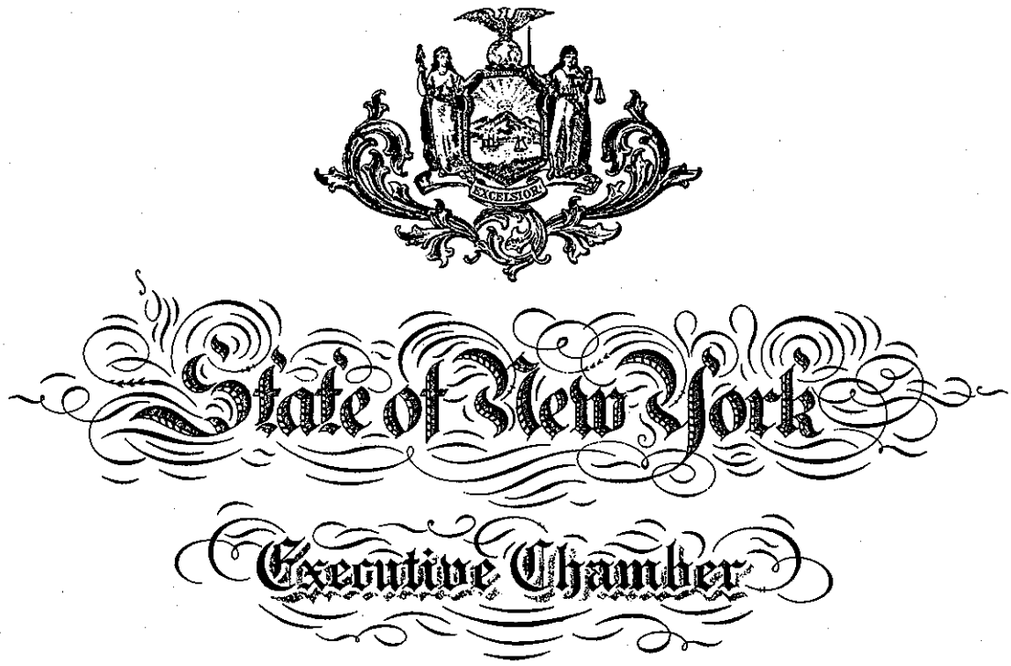

No. 17

E X E C U T I V E O R D E R

ESTABLISHING THE JOINT ENFORCEMENT TASK FORCE ON EMPLOYEE MISCLASSIFICATION

WHEREAS, an increasing number of employers in New York and elsewhere are improperly classifying individuals they hire as "independent contractors," even when those workers legally should be classified as "employees" (hereinafter referred to as "employee misclassification"); and

WHEREAS, employers sometimes engage in employee misclassification in an attempt to avoid the employers' legal obligations under the federal and state labor, employment and tax laws, including laws governing minimum wage, overtime, prevailing wage, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment and income tax; and

WHEREAS, employee misclassification has a significant adverse impact on the residents, businesses and economy in New York, because this practice: (1) deprives vulnerable workers of protections and benefits that they need and to which they are legally entitled; (2) reduces compliance with employment and safety standards; (3) gives employers who misclassify their employees an improper competitive advantage over law-abiding businesses; (4) deprives the State of substantial revenues; and (5) imposes indirect costs on the State from decreased legitimate business activity and increased demand for social services; and

WHEREAS, a recent study based on audits of New York employment records between 2002 and 2005 found that up to 10% of the employees covered by the audits may have been misclassified; and

WHEREAS, law enforcement activities in this area historically have been divided among various agencies, reducing the efficiency and effectiveness of enforcement; and

WHEREAS, enforcement efforts to address the problem of employee misclassification can be enhanced and made more efficient through interagency cooperation, information sharing, and joint prosecution of serious violators; and

WHEREAS, the creation of joint task forces has proven to be an effective mechanism for coordinating and enhancing labor law enforcement, including efforts by other States to address the problem of employee misclassification;

NOW THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the power and authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. There is hereby established the Joint Enforcement Task Force on Employee Misclassification ("Task Force").

2. The Task Force shall consist of the Commissioner of Labor, the Attorney General, the Commissioner of Taxation and Finance, the Chair of the Workers' Compensation Board, the Workers' Compensation Fraud Inspector General, and the Comptroller of the City of New York. The Commissioner of Labor shall serve as the Chair of the Task Force.

3. Any member of the Task Force may designate an agency representative to act on his or her behalf. A majority of the members of the Task Force shall constitute a quorum, provided that the Task Force may hold meetings and conduct business even in the absence of a quorum.

4. The Task Force shall coordinate the investigation and enforcement of employee misclassification matters by the members of the Task Force and other relevant agencies. In fulfilling this mission, the Task Force shall have the power and duty:

a. to facilitate the sharing among the Task Force members of information relating to suspected employee misclassification violations, in a timely manner and to the maximum extent permitted by law;

b. to pool, focus and target investigative and enforcement resources;

c. to assess existing methods, both within New York and in other jurisdictions, of preventing, investigating and taking enforcement action against employee misclassification violations, and to recommend that participating agencies adopt appropriate measures to improve their prevention and enforcement efforts;

d. to develop strategies for systematically investigating employee misclassification within those industries in which misclassification is most common;

e. to facilitate the filing of complaints and identification of potential violators, including by soliciting referrals and other relevant information from the public through an advertised telephone hotline;

f. to identify significant cases of employee misclassification which should be investigated jointly, and to form joint enforcement teams to utilize the collective investigative and enforcement capabilities of the Task Force members;

g. to establish protocols through which individual Task Force agencies investigating employee misclassification matters under their own statutory or administrative schemes will refer a matter to other participating agencies for assessment of potential liability under all their other relevant statutory or administrative schemes;

h. to solicit the cooperation and participation of local district attorneys and other relevant agencies, and to establish procedures for referring cases to prosecuting authorities as appropriate;

i. to work cooperatively with business, labor, and community groups interested in reducing employee misclassification, including but not limited to: (i) seeking ways to prevent employee misclassifications, such as through the dissemination of educational materials regarding the legal differences between independent contractors and

employees; and (ii) enhancing mechanisms for identifying and reporting employee misclassification where it does occur;

j. to increase public awareness of the illegal nature of and harms inflicted by employee misclassification;

k. to work cooperatively with federal, state, and local social services agencies to provide assistance to vulnerable populations that have been exploited by employee misclassification, including but not limited to immigrant workers; and

l. to consult with representatives of business and organized labor, and other agencies including the Empire State Development Corporation, in regard to the activities of the Task Force and its members, and ways of improving its operation.

5. The Task Force shall issue a report to the Governor on February 1 of each year, which shall:

a. describe the record and accomplishments of the Task Force, including the amounts of wages, premiums, taxes and other payments or penalties collected with the assistance of Task Force activities, as well as the number of employers cited for legal violations related to misclassification and the approximate number of employees affected;

b. identify any administrative or legal barriers impeding the more effective operation of the Task Force, including any barriers to information sharing or joint action;

c. propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies including the Empire State Development Corporation, appropriate administrative, legislative, or regulatory changes to: (i) reduce or eliminate any barriers to the Task Force's operations; (ii) prevent employee misclassification from occurring; (iii) investigate potential violations of the laws governing employee misclassification; and (iv) improve enforcement where such violations are found to have occurred; and

d. identify successful mechanisms for preventing employee misclassification, and thereby reducing the need for greater enforcement.

6. Every agency, department, office, division, or public authority of the state shall cooperate with the Task Force and furnish such information and assistance as the Task Force determines is reasonably necessary to accomplish its purposes.

G I V E N under my hand and the
Privy Seal of the State
in the City of Albany
this fifth day of
September in the year
two thousand seven.

BY THE GOVERNOR

/s/ Eliot Spitzer

/s/ Richard S. Baum

Secretary to the Governor