



Commonwealth of Virginia  
Office of the Governor

## *Executive Order*

### **NUMBER THIRY-EIGHT (2019)**

#### **REAUTHORIZING AN INTER-AGENCY TASKFORCE ON WORKER MISCLASSIFICATION AND PAYROLL FRAUD**

##### **Importance of the Issue**

The misclassification of actual employees as “independent contractors” creates a competitive disadvantage for Virginia businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenues necessary to supply services to Virginia’s citizens, and prevents workers from receiving protections and benefits to which they legally are entitled.

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) found that one third of audited employers in certain industries misclassify employees. By failing to purchase workers' compensation insurance, pay unemployment insurance and payroll taxes, or comply with minimum wage and overtime laws, employers reduce their labor overhead as much as 40%, placing employers who properly classify employees at a competitive disadvantage.

Based on state and national studies, JLARC estimated that worker misclassification lowers Virginia’s state income tax collections as much as \$28 million per year. Agencies with relevant enforcement responsibilities, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission’s Bureau of Insurance, the Department of Taxation, and the Workers’ Compensation Commission, each address only one component of this practice and may not fully coordinate their efforts. In its study, JLARC recommended the establishment of a task force with representatives from the agencies listed above.

##### **Reauthorization of the Taskforce**

Pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, and the *Code of Virginia*, in order to continue to examine the issue of worker misclassification and payroll fraud, I hereby re-authorize the Inter-Agency Taskforce on Worker

Misclassification and Payroll Fraud (Taskforce) first established in Executive Order Sixteen (2018).

### **Initiatives**

The purpose of the Taskforce going forward should include, but not be limited to:

1. Reporting on statutes and regulations related to worker misclassification and payroll fraud and, if appropriate, recommending changes or additions to relevant legislation or administrative rules including an assessment of whether existing definitions of “employer” and “employee” are satisfactory or should be updated in light of current employment practices;
2. Reporting on current enforcement practices of the agencies involved and recommending procedures for more effective interagency cooperation and joint enforcement;
3. Reporting on the findings of efforts in other states and providing examples of effective methods for education and outreach;
4. Identifying effective ways to hold accountable companies working on state contracts that commit payroll fraud through misclassification of workers; and
5. Identifying ways to deter such misconduct through incentives and enforcement mechanisms.

The Taskforce, co-chaired by the Secretary of Commerce and Trade and the Governor’s Chief Workforce Development Advisor, will include representatives from the Virginia Employment Commission, the Department of General Services, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department of Taxation, the Workers’ Compensation Commission, and the Office of the Attorney General.

The Taskforce shall meet with and receive input from stakeholder groups, to include business community representatives and labor organizations, impacted by misclassification statutes and regulations and shall report to the Governor its preliminary findings and recommendations no later than November 1, 2019.

### **Staffing**

Staff necessary for the Taskforce will be provided by the respective participating agencies and from the Secretary of Commerce and Trade and the Chief Workforce Development Advisor.

**Effective Date of the Executive Order**

This Executive Order supersedes Executive Order No. 16 (2018) and shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the *Code of Virginia* shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 8<sup>th</sup> day of August, 2019.



A handwritten signature in cursive script, reading "Ralph S. Northam".

Ralph S. Northam, Governor

Attest:

A handwritten signature in cursive script, reading "Kelly Thomasson".  
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Kelly Thomasson, Secretary of Commonwealth