

The purpose of this notification is to remind licensees that all laborers working under a licensed contractor must be bona-fide employees as defined in 21 North Carolina Administrative Code 50.0512 (Board Rules), which require that employees be 1) on the licensed contractor's payroll, 2) payroll taxes are withheld and the contractor performs other acts lawfully required of an employer (including the issuance of W2s at year end), 3) the contractor exercise control and supervision over the method, manner and details of the individual's work, and 4) the contractor is obligated to the property owner or general contractor for the work.

Contractors are also permitted to use employees who are contracted through a labor supplier, with a written contract that specifically places the payroll and tax withholding obligations on the contractor or labor supplier. The licensed contractor must meet the obligations in the previous paragraph and cannot be an employee contracted by or acting as a labor supplier.

Employee misclassification is defined in N.C. Gen. Stat. § 143-786(5) as avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, 105, or 143 of the North Carolina General Statutes by misclassifying an employee as an independent contractor.

As a result of the Employee Fair Classification (EFCA) (Article 83, N.C.G.S. §143-785- §143-791), employee misclassification issues are monitored by the following agencies:

- the North Carolina Department of Labor;
- the North Carolina Department of Commerce's Division of Employment Security;
- the North Carolina Department of Revenue; and
- the North Carolina Industrial Commission

In addition, the North Carolina Industrial Commission issued the following nearly five years ago:

Public Notice Statement required by N.C. Gen. Stat. § 143-764(a)(5), effective December 31, 2017

Any worker who is defined as an employee by N.C. Gen. Stat. §§ 95-25.2(4)(NC Department Of Labor), 143-762(a)(3)(Employee Fair Classification Act), 96-1(b)(10)(Employment Security Act), 97-2(2)(Workers' Compensation Act), or 105-163.1(4)(Withholding; Estimated Income Tax for Individuals) shall be treated as an employee unless the individual is an independent contractor. Any employee who believes that the employee has been misclassified as an independent contractor by the employee's employer may report the suspected misclassification to the Employee Classification Section within the North Carolina Industrial Commission.

Employee Classification Section

North Carolina Industrial Commission

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The bottom line is that unless a written contract exists between a recognized labor supplier that assigns the payroll and tax withholding obligations to the labor supplier, all laborers must be bona-fide employees of the licensed contractor or the firm they qualify, and the contractor or their firm must assume full responsibility for payroll and tax withholding obligations.

If the Board receives a complaint alleging that a licensee is not meeting the requirements for bona-fide employees, the complaint will be investigated for violations of the Board rules, and the findings will be forwarded to the North Carolina Industrial Commission who in turn distributes the information to the North Carolina Department of Commerce's Division of Employment Security, North Carolina Department of Labor, and the North Carolina Department of Revenue for them to take appropriate action.