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**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
MARCH 4, 2010**

I appreciate the opportunity to support House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification with the attached amendment.

In 2008, the General Assembly established a joint commission of 5 state agencies (Attorney General, Chief State's Attorney, Labor, Revenue Services and Workers Compensation Commission) to work collaboratively on the problem of some businesses misclassifying employees as independent contractors. In addition, the legislation created an advisory group to the joint commission consisting of representatives from business and labor.

Misclassification costs employees important compensation and benefits while fraudulently failing to pay assessments for unemployment compensation and workers compensation. Misclassification also creates an unfair advantage for companies over other competitors who properly designate their employees and provide the legally required benefits.

The Joint Commission recently issued its first annual report which contained a recommendation for studying the current level of penalties for misclassifying employees. The commission and the advisory group have agreed to recommend the attached legislation to increase the civil penalties for failing to obtain workers compensation insurance or knowingly misrepresenting one or more employees as independent contractors from \$300 per violation to \$300 for each day the violation occurs. A company can often save thousands of dollars each month by misclassifying employees. At \$300, the civil penalty is merely a cost of doing business. The per day fine recommended in the attached amendment will substantially increase the law's deterrence. I would support even higher penalties -- up to \$1,000/day -- but this proposal is solid step in the right direction.

In addition, the amendment also clarifies that the criminal penalty for knowing violations of the misclassification law includes defrauding the state of Connecticut. The current language only focuses on the violator's intent to injure or defraud an insurance company. However, the state of Connecticut -- through the failure to pay legal assessments for unemployment and workers compensation -- is also harmed. This language will enhance the ability of the chief state's attorney to bring criminal action in the most egregious cases.

I urge the committee's favorable consideration of the attached amendment.

2010 GENERAL ASSEMBLY SESSION
JOINT ENFORCEMENT COMMISSION ON WORKER
MISCLASSIFICATION
(March 3, 2010 p.m.)

SUMMARY: Proposed amendment to House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification. This amendment assesses the current civil penalty of \$300 for each day that an employer fails to obtain worker's compensation insurance or knowingly misrepresents one or more employees as independent contractors. Under current law, the funds are credited to the Labor Department for use in the enforcement of employment regulation, wages, and the workers compensation statute.

The amendment also expands the workers compensation criminal penalty to include intent to defraud the state of Connecticut when knowingly misclassifying workers and adds a violation of a subsection that contains an alternative approach for paying workers compensation assessments.

TEXT:

Sec. 1. Section 31-69a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*): (a) In addition to the penalties provided in this chapter and chapter 568, any employer, officer, agent or other person who violates any provision of this chapter, or chapter 557 or subsection (g) of section 31-288, shall be liable to the Labor Department for a civil penalty of three hundred dollars for each violation of said chapters and for each violation of subsection (g) of section 31-288 and each day of such violation of section 31-288g shall constitute a separate offense, except that any person who violates (1) a stop work order issued pursuant to subsection (c) of section 31-76a, shall be liable to the Labor Department for a civil penalty of one thousand dollars and each day of such violation shall constitute a separate offense, and (2) any provision of section 31-12, 31-13 or 31-14, subsection (a) of section 31-15 or section 31-18, 31-23 or 31-24 shall be liable to the Labor Department for a civil penalty of six hundred dollars for each violation of said sections.

(b) The Attorney General, upon complaint of the Labor Commissioner, shall institute civil actions to recover the penalties provided for under subsection (a) of this section. Any amount recovered shall be deposited in the General Fund and credited to a separate nonlapsing appropriation to the Labor Department, for

other current expenses, and may be used by the Labor Department to enforce the provisions of chapter 557, this chapter and subsection (g) of section 31-288 and to implement the provisions of section 31-4.

Sec. 2. Subsection (g) of section 31-288 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(g) Any employer who (1) has failed to meet the requirements of subsection (b) or subsection (c) of section 31-284, or (2) with the intent to injure, defraud or deceive any insurance company insuring the liability of such employer under this chapter or the state of Connecticut because of the failure to pay workers compensation assessments in accordance with the provisions of section 31-345 or second injury fund assessments in accordance with the provisions of section 31-354, (A) knowingly misrepresents one or more employees as independent contractors, or (B) knowingly provides false, incomplete or misleading information to such company concerning the number of employees, for the purpose of paying a lower premium on a policy obtained from such company, shall be guilty of a class D felony and shall be subject to a stop work order issued by the Labor Commissioner in accordance with section 31-76a.