

# Public Act 100-0536: Employee Misclassification Referral System Act

**GOES INTO EFFECT JUNE 1, 2018!**

The new law requires the Illinois Department of Labor to create an online employee misclassification referral system on its website where misclassification complaints may be made by employer (i.e. Home Care Agencies) and employee alike to the Department of Employment Security, the Illinois Workers' Compensation Commission, the Department of Revenue, and the Department of Labor, as applicable.

Home Care Agencies found not to be in compliance as the result of an administrative review triggered by a referral to the website may have their license denied by the Illinois Department of Public Health.

## What is Employee Misclassification?

In order to avoid expenses, such as employer tax withholdings, unemployment insurance and worker's compensation insurance, some home care agencies classify their workers as 1099 contractors while representing themselves to the consumer as the employer of the workers.

## Who is harmed by Misclassification?

### 1. The Consumer

The consumer assumes full responsibility for all labor law protections, including liability for workplace accidents and injuries, unemployment insurance, and all employer tax obligations.

### 2. The Worker

As 1099 contractors, workers lose their worker's compensation and unemployment benefits. They become personally responsible for worker and employer Social Security and Medicare withholding.

## What should home care agencies do now?

- 1 Licensed employer-model home care agencies should educate prospective clients about the benefits of the employer model.
- 2 They should urge their referral sources to (1) ask every home care agency whether their agency follows the employer model, and (2) show only licensed employer-model agencies on their referral list.
- 3 They should keep detailed records of any instances of worker misclassification they observe, for later reporting to the Misclassification Referral System.
- 4 Watch for Home Care Association of America communications on the new Misclassification Referral System operational status.
- 5 Owners of home care agencies that currently use the 1099 contractor model should consider becoming W-2 employers.