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ROD R. BLAGOJEVICH - GOVERNOR

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CONTACTS:

Rebecca Rausch 217/782.7355

Anjali Julka (IDOL) 312/814.0093

Gov. Blagojevich reminds Illinoisans about new protections for the state's construction workers

Employee Classification Act effective January 1st to help ensure fair competition among construction contractors by making sure all employees are properly classified

CHICAGO – Governor Rod R. Blagojevich today reminded Illinoisans that a new labor law designed to strengthen protections for workers and level the playing field in the state's construction industry will go into effect on January 1, 2008.

The Employee Classification Act, signed into law by the Governor earlier this year, will prevent the practice of misclassifying workers in the construction industry as independent contractors. The new law will make sure that employees in the construction trades are properly classified, entitling them to protections under numerous labor laws, including minimum wage, overtime, workers' compensation and unemployment insurance.

"All workers in Illinois should be protected by employment and labor laws. This law will protect workers from being misclassified so they don't lose basic protections. The law will also make sure employers do not avoid obligations like payroll and social security taxes, and workers' compensation premiums," said the Governor.

Studies have shown that misclassification of employees as independent contractors costs the state millions in revenue. The University of Missouri-Kansas City Department of Economics estimated that from 2001 through 2005, \$124.7 million in income tax was lost annually in Illinois because of misclassification, including \$8.9 million in the construction sector. Misclassification reduces federal income tax revenues by approximately \$4.7 billion annually, according to the General Accounting Office.

"The Illinois AFL-CIO and our affiliates in the building trades have anticipated the enactment of this law for some time. It not only protects workers, but it sets fines and penalties for those dishonest contractors who are misclassifying their employees to avoid paying their state and federal taxes. The new Employee Misclassification regulations will level the playing field and keep honest contractors competitive," said Michael Carrigan, President of the Illinois AFL-CIO.

“We have over 200 mason contractors in our organization who work and live by the rules. Unscrupulous contractors, who choose to ignore the rules by misclassifying their employees and undercutting legitimate contractors, throw the competitive balance in their favor. Reputable contractors want to build projects, create a safe workplace for their employees, provide employees with a livable wage and protect their families if something were to happen to them. We’re heartened that Gov. Blagojevich saw the fairness in this law,” said Jim O’Connor, Executive Secretary, Mason Contractors Association of Greater Chicago.

The Employee Classification Act presumes an individual performing work for a construction contractor is an employee unless the following criteria is met: the individual is free from control or direction over the performance of the service for the contractor; the service performed is outside the usual course of services of the contractor; and the individual is in an independently established trade, occupation, profession or business. A sole proprietor or partnership performing services for a contractor would not be considered an employee of the contractor as long as they can show that they are a legitimate subcontractor by meeting 12 conditions specified in the Act.

The Act applies to all construction work performed within Illinois, including public and private construction, residential and commercial building, maintenance, renovation and repair work, landscaping, painting and decorating work and the transportation of construction-related materials.

The Act authorizes the Illinois Department of Labor to enforce the law, including assessing penalties of up to \$1,500 for each violation found in a first audit by the Department, and up to \$2,500 for each repeat violation found by the Department within 5 years. For any second or subsequent violations within 5 years, the Department will bar the employer from receiving any state contracts for 4 years.

“With this new law, contractors will think twice before they cheat the state and federal governments out of tax revenues, deprive workers of critical labor law protections and illegitimately underbid contractors who meet their legal obligations,” said Tom Villanova, President, Chicago and Cook County Building and Construction Trades Council.

Any aggrieved individual or interested party also has the right to file a private lawsuit seeking remedies for misclassification violations, including collection of any wages, employment benefits or other compensation denied or lost, monetary damages and attorney’s fees and court costs.

The Act also requires collaboration and sharing of information among other appropriate state agencies including the Illinois Department of Employment Security, the Illinois Department of Revenue and the Illinois Workers’ Compensation Commission, who upon referral by the Illinois Department of Labor are required to check such contractor’s compliance with their tax and employment laws.

The Illinois Department of Labor is reminding employers and employees about the new Employee Classification Act taking effect by distributing required postings to business groups, labor unions, civic and community organizations, as well as posting information on its website www.state.il.us/agency/idol. Posters are available in English, Spanish and Polish. More information regarding the Employee Classification Act is available by calling the Illinois Department of Labor at 217-782-1710.