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## CRACKDOWN ON MIS-CLASSIFICATION OF INDEPENDENT CONTRACTORS

According to Business Management Daily, the Internal Revenue Service claims that 80% of the workers claimed by employers to be "independent contractors" are actually employees. According to the article, "a massive new 'mis-classification initiative' launched by the IRS and U.S. Department of Labor (DOL) is targeting employers for more audits and closer scrutiny. As part of the crackdown, the DOL hired 100 new auditors solely to investigate mis-classifications.

Mis-classifying independent contractors can be very costly, not only from the Internal Revenue Service standpoint, but also under the wage and hour laws, if the DOL finds the independent contractors to be employees and have worked over 40 hours in a work week, they would be entitled to overtime for all hours worked over 40.

Other laws implicated include:

- Failure to pay, withhold and/or match federal taxes, Medicare and Social Security monies
- Failure to pay workers' compensation premiums which would include not only the premiums that should be paid, but a significant penalty for non-payment;
- Failure to pay unemployment compensation taxes;
- Potential implications under the Employment Retirement Income Security Act in the event that the putative independent contractors are deemed employees and should have been covered under the company's retirement plan.

To make matters worse, a bill has been introduced in the U.S. senate called the **Payroll Fraud Prevention Act of 2013** in an effort to introduce legislation at the Federal level to curtail the mis-classification of independent contractors, which its sponsors equate with "payroll fraud." One provision of this proposed bill which is most likely to receive attention is the obligation for every employer and enterprise to provide a classification notice to both "non-employees" and employees. Written notice must be provided to all workers (a) stating that they have been classified by the business as either an employee or non-employee; (b) direct them to a U.S. Department of Labor website for further information about the rights of employees under the law; and (c) informing them to contact the DOL if they suspect they have been mis-classified.

Additionally, provisions of the bill include:

- Impose triple damages for willful violations of the minimum wage and overtime laws where the employer has mis-classified the worker;
- Direct the Secretary of Labor to establish a mis-classification website;
- Authorize the Secretary of Labor to impose additional penalties upon employers that mis-classify employees for unemployment compensation purposes;
- Authorize the Department of Labor to report mis-classification information to the IRS

If you use independent contractors and have any questions as to whether or not they qualify as that term

is defined under the various state and federal tax laws, labor or employment laws, please contact any of the members of our [labor and employment](#) or [tax law](#) team with who you work.

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