



September 30, 2011

IRS GIVES A BREAK TO EMPLOYERS ON MISCLASSIFICATION OF WORKERS

On September 21, 2011, the Internal Revenue Service ("IRS") launched a new program enabling employers to resolve past misclassification issues of workers. The new Voluntary Classification Settlement Program ("VCSP") allows employers to voluntarily reclassify workers as employees by making a minimal payment covering past payroll tax obligations.

Under the VCSP, eligible employers are able to obtain substantial relief from federal payroll taxes they may have owed for the past if they prospectively treat workers as employees. To be eligible for the VCSP an applicant must (1) consistently have treated the workers in the past as non-employees; (2) have filed all required Form 1099s for the previous three years; and, (3) not currently be under audit by the IRS, the Department of Labor, or a state agency concerning the classification of workers.

If interested, employers can apply for the program by filing a Form 8952, which is located on the IRS's website, www.irs.gov. The application must be completed sixty (60) days prior to the employer wanting to treat workers as employees.

If an employer is accepted into the VCSP, the employer will pay 10% of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, to be determined under the reduced rates of Section 3509 of the Internal Revenue Code. The IRS states that no interest or penalties will be due and that employers will not be audited on payroll taxes related to worker classification of the workers for the prior years. However, employers who participate and are accepted in the VCSP will for the first three (3) years under the VCSP be subject to a special six (6) year statute of limitations rather than the usual three (3) year statute of limitations for payroll taxes.

Employers considering whether to utilize the VCSP should review their benefits plans to determine potential issues. These include when the new employees become eligible for the plan, how years of service calculations are affected for allocation, vesting or accrued benefits purposes, and timing of any required disclosures. The [Employment and Labor](#) practice group would be happy to assist employers in evaluating these potential issues and recommending solutions.

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