



## News & Updates

### **EMPLOYERS MUST PREPARE FOR SCRUTINY AS FEDERAL AND STATE LABOR DEPARTMENTS JOIN TOGETHER TO FIGHT EMPLOYEE MISCLASSIFICATION**

Employers across the country continue to misclassify workers as independent contractors rather than as employees, and as we recently saw in *Alexander v. FedEx Ground Package System, Inc.*, such actions can result in litigation and federal and state scrutiny.

Employee misclassification has far-reaching financial implications because it prevents workers from receiving many critical benefits and protections to which they are entitled, such as overtime pay, family and medical leave, minimum wage pay, and unemployment insurance. In addition, on a national level, misclassification generates substantial losses to the Treasury, Social Security, and Medicare, as well as state unemployment insurance and workers' compensation funds.

As a result, the U.S. Department of Labor has embarked upon a "Misclassification Initiative" under which it has signed a Memorandum of Understanding (MOU) with the Internal Revenue Service and with numerous state Departments of Labor. These include Alabama, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, New York, Utah, and Washington.

Under these agreements, the agencies will work together and share information to reduce the incidence of misclassification, to help reduce the tax gap, and to improve compliance with federal labor laws. The agencies want to level the playing field for law-abiding employers who are finding it increasingly difficult to compete in the marketplace.

In fiscal year 2013, investigations by the Wage and Hour Division of the U.S. Department of Labor (WHD) resulted in more than \$83 million in back wages for over 100,000 workers in a variety of industries, including janitorial, food, construction, day care, hospitality, and garment. Reportedly, the WHD regularly finds large concentrations of misclassified workers in low-wage industries.

Please note that business models that attempt to change the employment relationship through the use of independent contractors are not inherently illegal, but they will be closely scrutinized so that they are not used to evade compliance with federal or state law. When classifying employees, a cautious approach is essential.

For more information about how this initiative may impact your business, please contact:

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#### Files

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