

Special Edition

IRS, States Crack Down on Independent Contractor

Months ago, I wrote an article on Independent Contractors under Siege. I indicated that;

- IRS announced plans to randomly audit approximately 6,000 employers to determine if workers were properly classified.
- I stated democrat, James McDermott, had introduced legislation to eliminate the Safe Harbor Provision, except when IRS had previously conducted an audit;
- I further indicated, there were numerous bills addressing employee misclassification from previous congressional sessions that were expected to be reintroduced.

Last year, there were 72 bills in the various state legislatures that dealt, specifically, with workers compensation and Independent Contractors. I stated, many states had set up special task forces to look for opportunities to re-classify Independent Contractors to employees so that the states can collect unemployment taxes and arrearages.

I received a substantial amount of concern and, in some cases, some of my customers indicated;

- "My attorney has looked over my contract".
- "We've tightened it up a little bit and I'm safe".

Well, read again! According to ABC news, they had a headline that read as follows: "IRS, States Crack Down on Independent Worker Abuse" and the subtitle read; "Companies Slash Payrolls by Calling Workers Independent Contractors--Costly to IRS and States." The article indicated;

- IRS and 37 states are cracking down on companies that try to trim payroll costs by "illegally classifying workers and independent contractors, rather than full employees".
- This "practice" cost the government billions in lost revenue and can leave workers high and dry when they are hurt at work, or left jobless.
- Many experts, who have studied the program, believe it's worsened during the economic downturn, fueling even more aggressive recovery efforts by states.

The Society for HR Management, who represents company personnel departments nationwide, said it surveyed members in October 2008 and found 12% of them were moving to utilize more Independent Contractors, contingent and temporary workers because of the recession.

The Federal Government Accountability Office estimated an employee misclassification resulted in the under payment of an estimated \$2.7 billion in social security taxes, unemployment insurance taxes and income taxes in 2006, which was the last year for which figures are available. Obviously, those numbers have escalated.

Since that time, the IRS is cracking down and the states are cracking down and you need to be prepared. In New York, a multi-agency team reported finding nearly 31,500 cases of employee misclassification and nearly \$390MM in unreported wages from 2007 and the end of 2009. It ordered employers to pay more than \$28MM in past due wages, taxes and penalties.

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February 15, 2010

New York's "team" found 12,300 misclassification cases in 16 months ending December 2008. By the year ending 2009, it found 19,200 more cases.

In California, Orange County prosecutors said, last year, they would seek \$38MM from a couple for workers compensation frauds for failing to pay premiums and submitting claims for 42 injured but uninsured workers at their construction companies.

In Florida, 2008 state wide, a Grand Jury found some construction contractors conspired with check cashing stores to fake payments to a bogus subcontractor, cash the check themselves and pay workers cash, under the table.

In the state of Ohio, the states Bureau of Workers Compensation ruled last year that a former state attorney general's top aid improperly classified all four employees at his Youngstown construction company. The state won't say how much he owes in restitution.

Mathew Capece, an officer with United Brotherhood of Carpenters and Joiner's of America, called the state's efforts encouraging.

Now, we all know that you can't operate a business illegally. However, we also know that the government is out of money. We also know that the government is looking for revenue wherever they can get it. There has always been a 20 point test for independent contractors in the transportation business;

- For years, if trucking companies operated within that 20 point control test, they were safe.
- With what we're witnessing today, nobody is safe!

Independent contractors are suppose to keep costs down and allow the trucking industry to stay flexible in an increasingly tough and competitive economy. Other companies utilize independent contractors because they have a desire to focus on their core business and they feel that transportation, in some instances, are a byproduct of their business.

I stated several months ago, and I'll state once again, have your contracts reviewed for your independent contractors and follow the 20 point test to its absolute wording;

- Continue to distance yourself and do not provide any type of benefits, to independent contractors, in which it may appear that those independent contractors are employees.
- Have your law firm provide a written opinion letter of your exposure.
- Failure to properly have your contracts continually reviewed, and your business model continually updated, could cost you your business.

FedEx Ground has been sued more than 45 times for classifying package delivery drivers as Independent Contractors. Court rulings have been split. UPS is close to settling a California worker misclassification case.

Cable television giants; Comcast and Target, have been sued for allegedly hiring intermediary companies that denied benefits to workers.

QUOTE OF THE WEEK: "The glass ceiling is not nearly as dangerous as the glass floor most executives stand on".