

38th Annual Corporate Counsel Institute

Whose Employee is it Anyway?

Independent Contractors, Employees, and Joint Employer Issues

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D.O.L. Mindset on Independent Contractors

- Currently 42 million consultants, independent contractors, entrepreneurs, and freelancers. (U.S. Government Accountability Office Study).
- July 15, 2015 blog post from Wage/Hour Admin. David Weil:
 - "...**misclassifying employees** as independent contractors is among the most damaging to workers and our economy."
 - "Misclassified employees are often **denied access to the critical benefits and protections** they are entitled to."
 - "We also will continue to work with the **IRS and 23 states** on this issue in a variety of ways — through, for example, information sharing and coordinated enforcement."

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Federal Enforcement Initiatives

- **\$14 million** budget allocated to independent contractor misclassification in FY 2016.
- **\$10 million** D.O.L. grant to 19 states to implement and improve worker classification detection initiatives through unemployment insurance programs in FY 2014.
- **\$79 million** recovered by D.O.L. through investigations in 2014.
- “Bridge to Justice Program” — referral to private plaintiffs’ lawyers with estimates of back pay due.
- Use of apps, social media, and DOL website as information resource.

Consequences of Improper Classification

- Back taxes and lower tax revenue for federal/state government
- Social Security and Medicare taxes
- Workers’ Compensation
- Interest and civil penalties
- Criminal penalties
- IRS Audits
- State DOL/TWC Audits
- Back wages and liquidated damages
- Health insurance and benefits (e.g., pension plan)
- Coverage under federal/state employment laws
- Uneven playing field for employers who properly classify workers

Litigation Trends

- FLSA collective actions
- State wage payment claims
- State fraud/misrepresentation claims
- ERISA/benefit claims

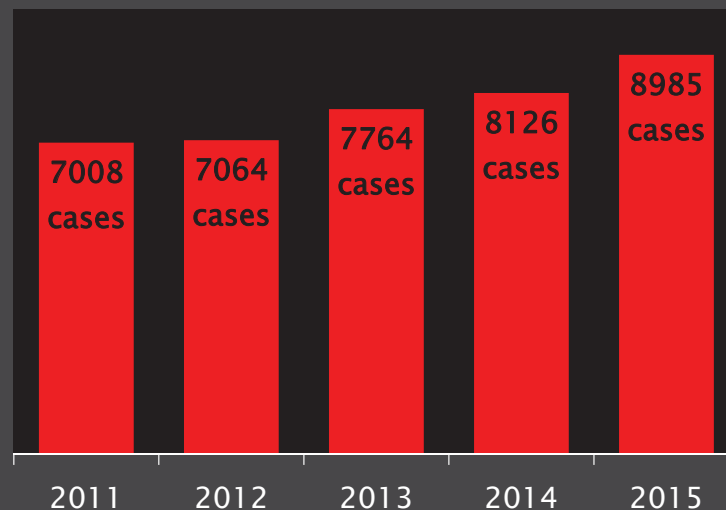


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FLSA Cases Filed by Year



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"Whose Employee Is It, Anyway?"