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."
 - "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."



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.



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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 8985 8126 cases 7764 7008 7064 cases cases cases cases 2011 2012 2015 2013 2014 Ogletree Deakins





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Title search: Whose Employee Is It, Anyway? Independent Contractors, Employees, and Joint Employer Issues

Also available as part of the eCourse 2016 Corporate Counsel eConference

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