

## – VITAL LEGAL INFORMATION YOU NEED TO KNOW –

# Your Business and Independent Contractor Misclassification

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In today's "gig economy" more businesses than ever are outsourcing important functions. This means they must be cautious of misclassifying workers as independent contractors, rather than employees.

Many businesses choose to use independent contractors in order to focus internal resources on core competencies. Some do it to lower costs and to insulate the business from perceived liabilities or to supplement scarce labor, support working preferences, or meet customer demands.

Regardless of the reason for relying on independent contractors, state and federal agencies as well as private litigants are challenging these business decisions by claiming workers classified as independent contractors are actually employees. The determination of employee status (which rests solely with the hiring business) carries significant implications under the law. Indeed, treating any worker as an employee triggers a variety of obligations, including payment of certain taxes; maintenance of certain records; and payment of minimum wage, overtime, unemployment, and workers' compensation. The list is long. If your business has misclassified an employee as an independent contractor, then it likely has not done everything required under the law. This leaves your business exposed to potentially crippling unpaid wages, state and federal tax assessments, monetary penalties, and double (or even triple) damages under some statutes, among other things.

In the past several years, federal and state agencies have taken on the issue of misclassification directly. They are acting more aggressively, sharing information among



themselves, and investigating employers perceived to be taking advantage by classifying workers as “independent contractors” to avoid employment obligations. Under the Obama administration, the Department of Labor took the position that most workers, including those businesses had identified as independent contractors, are actually employees. Many state agencies followed suit and continue to enforce employment-related regulations strictly. This puts numerous businesses in a precarious position — management must decide whether to change the business model or risk government investigation or private litigation.

The current administration has shifted the enforcement paradigm, slightly. The federal

Department of Labor now considers the “totality of the circumstances to evaluate whether an employment relationship exists.” Nevertheless, the legal standards governing the “employee” versus “independent contractor” determination are complex, inconsistent among agencies and states, and hard to navigate.

Businesses using independent contractors need to be aware of the risks and benefits of doing so by performing a structured assessment of their business model and implementing a strong compliance program. Taking these actions can position the business to handle agency inquiries effectively, decrease liabilities, and facilitate positive outcomes in investigations and litigation. If you want to evaluate whether you should be using independent contractors in your business model or would like help structuring your independent contractor relationships to lower the risk of costly challenges to your use of independent contractors, then contact the attorneys at Jackson Lewis P.C.

**Jackson Lewis P.C. represents management exclusively in workplace law and related litigation. Our attorneys assist employers in compliance efforts and represent them in state and federal courts, arbitration, and administrative proceedings.**



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