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Worker Classification under Attack: Consequences for Employers

The decision to hire someone is an expedition into unknown and treacherous territory. In addition to the questions associated with the personality, education, skills, and physical and mental abilities of the candidate who will be the best fit for the company, employers must decide whether to classify the worker as “employee” or “independent contractor.”

Government auditors and investigators and plaintiffs’ counsel are becoming more active and invasive than ever in policing worker classification. Economic volatility, high unemployment, increasing national debt, and loss of consumer confidence in investments have led to audits, fraud investigations, lawsuits of every kind and nature, and newly energized regulatory enforcement teams at the federal and state levels.

While the question of who is an employee has been analyzed and answered frequently, no definitive answer exists. This is because the legal analysis that a company must rely on to make a classification decision depends on the factual circumstances and origin of the law the company is trying to follow. While the classification question is usually controlled by federal or state common law (some states define employees by statute), the elements of the legal analysis depends on whether the company is considering its obligation to withhold and remit payroll tax, pay overtime, or offer a worker reasonable accommodation for a disability. The different laws can classify the same worker in different ways. For example, state regulators examining whether a worker is entitled to unemployment compensation may determine that a worker is an independent contractor under state law while the Internal Revenue Service may decide the worker is an employee entitled to participate in the company retirement plan under ERISA (Employee Retirement Income Security Act).

A misstep in worker classification raises the risk for exposure to all kinds of adverse actions and monetary liability for taxes, penalties or civil damages. For example, when a company classifies a new hire as an “independent contractor” rather than an “employee,” there is the possibility that the company may be at risk for payroll tax and employee benefit plan audits by the IRS, worker-initiated lawsuits under employment discrimination laws, Department of Labor investigations under the Fair Labor Standards Act, and actions for unfair labor practices before the National Labor Relations Board.

In addition to the difficulty in determining proper classification, no state or federal agency will issue an advance determination on whether a company’s job position qualifies as an “employment” position or “independent contractor” position. The IRS, for example, has stated it will not rule prospectively on whether the facts and circumstances of a job position describe an employment relationship.[1] Thus, a company must bear the risk of making the wrong classification.

This Special Report identifies the unique legal issues that arise under the various federal and state laws usually implicated by the worker-classification process. Highlights include the material differences in legal elements and analysis applicable under the laws where the majority of monetary liability for misclassification is likely to arise. Finally, we provide guidance to help companies make their way through the classification process.

[1] Rev. Proc 2010-3(70), (71), (72).

I. Federal and State Taxes

The tax regulatory compliance and enforcement environment is extremely active. Misclassification of workers appears as number 5 on the top-10 list of IRS audit and enforcement priorities in the business/employer tax area. Audits have increased between 10 percent and 30 percent in the years since 2000. IRS collection of revenue by levying bank accounts and property in the area of corporate audit has increased more than 15-fold, from 219,778 levies in 2000 to 3.4 million in 2009.[2]

The IRS says it relies on four primary methods to identify companies it will audit for misclassification issues:

1. **Review Form 1099s and issue Form SS-8s.** The IRS reviews Form 1099 MISCs submitted by companies and matches them with tax returns from individual taxpayers who received nonemployee compensation to see whether individual taxpayers paid self-employment tax. Taxpayers who fail to show they paid self-employment tax would receive a letter offering them the opportunity to complete a Form SS-8 and explain they were not required to pay self-employment tax because they *really* were "employees" of a company. The IRS then sends the same Form SS-8 to the company identified by the individual taxpayer and asks the company to provide information pertaining to the classification question. The agency's determination of the taxpayer's status as employee or independent contractor is binding upon the IRS and it will act accordingly in tax enforcement and assessment.
2. **Circulate "questionnaires" to sponsors of employee benefit plans.** The IRS announced it will send questionnaires to a wide cross-section of 401(k) plan sponsors across the country.[3] The sponsors' answers will inform the IRS whether the plan sponsor is omitting otherwise eligible individuals from plan participation because they are classified as independent contractors. Follow-up audits, Form SS-8 dissemination or compliance-check letters will allow the IRS to ascertain whether omitted workers should be treated as employees.
3. **Information sharing agreements between IRS and DOL, and between IRS and state taxing authorities.** Federal statutory law permits the IRS to exchange information with the Department of Labor and state taxing entities to assist the IRS in its enforcement and tax collection efforts.[4] The information-exchange program allows these authorities to follow up on and collect taxes, excise taxes and penalties from companies that misclassify employees or wrongfully deny individuals the right to participate in employee benefit plans, fringe benefit plans, and unemployment compensation programs.
4. **Match W-2 gross wage reporting to IRS with Social Security Administration reporting of FICA withholding and remittance reports.** The IRS matches its records of wages paid with the SSA's records of money withheld and remitted for FICA. Any discrepancy results in an inquiry with the affected individual taxpayer and employer.[5]

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[2] The IRS publishes its audit statistics in the "Compliance and Enforcement" section of its website at www.irs.gov/pub/irs-drop/fy_2009_enforcement_results.pdf.

[3] IRS Employee Plan News, Winter 2010, Volume 9, "EP Exam Director Discusses Priorities for Upcoming Year"; Employee Plans FY 2009 Work Plan Operating Priorities, TE/GE Employee Plans, October 2008.

[4] 26 U.S.C. §§ 6103(d)(1), (2), (5), 6103(l)(2).

[5] IRS Publication 15-A, Employer's Supplemental Tax Guide, June 25, 2010.

The IRS has announced recently that corporate entities will be required to disclose any deferred compensation plans or deferred payments that do not comply with Code section 409A and the applicable Treasury Regulations. This "self-disclosure" obligation will help the IRS identify companies that have misclassified workers or failed to withhold and remit payroll tax in a timely manner.[6]

For purposes of federal laws governing payroll taxes, certain workers are deemed "statutory employees" or "statutory nonemployees." Special rules govern a company's obligation to pay federal taxes with regard to these workers. Workers not within the definitions for statutory employees are classified under a common-law test that focuses upon the degree of control a company has over the worker. The analysis includes examination of three general factors: (1) behavioral control, (2) financial control, and (3) the nature of the relationship between the worker and the company.

Statutory Employees:

A worker is deemed a **statutory employee** if:

1. substantially all of the worker's services are performed personally by the worker (rather than by individuals the worker hires);
2. the worker does not have a substantial investment in the tools and property used in performing the services;
3. the worker's services are performed on a continuing basis for the same company; **and**
4. the worker is:
   - A non-milk beverage, produce, bakery, laundry or dry cleaning delivery driver for the company;
   - A full-time life insurance agent working primarily for one life insurance company;
   - A person who works for the company at home with tools and materials the company supplies and who works at the company's specifications; or
   - A full-time traveling salesperson that turns in orders to the company for merchandise for resale or for supplies (such as office supplies).[7]

Nonemployees:

Individuals deemed "**nonemployees**" under federal statutory law are those workers who are:

- Direct sellers;
- Licensed real estate agents; and
- Some companion sitters.[8]

These workers are always treated as self-employed by the IRS as long as most of their compensation is derived directly from their sales or work output and a written contract controls their services to the company.

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[6] *See* IRS Notice 2010-6.
[7] 27 U.S.C. § 3121(d)(3).
[8] 26 U.S.C. §§ 3506, 3508; IRS Publication 15-A, Employer's Supplemental Tax Guide, June 25, 2010.

Job positions falling outside the statutory employee and nonemployee definitions must be analyzed using 20 or so factors that, in the aggregate, determine for federal tax purposes the nature of the relationship between the worker and the company. The factors fall under the following broad categories:

- *Behavioral control* – the amount of direction and control the company has over the worker's work location, choice of tools, assistants, purchases of supplies, and priority of tasks;
- *Financial control* – the extent to which the company dictates what expenses should be reimbursed, how much money the worker invests in the acquisition and performance of the work, the extent to which the worker provides the same services for other parties, and the manner in which the worker is paid (i.e., by the hour or by the task); and
- *Nature of the relationship* – the permanency of the work relationship, whether the relationship is controlled by contract, whether insurance and benefits are provided, and whether the tasks performed by the worker are integral to the retaining company's business.

Industry practice and custom also weighs on the determination of whether a worker is an employee or independent contractor.

If workers are misclassified under federal tax law, the employer will be responsible for federal payroll taxes going back three years and liability for state income tax withholding penalties, unemployment taxes, and disability program taxes (because of the information-sharing program with the states).

Under some circumstances, employers can resolve a misclassification issue with the government without suffering liability for past-years' payroll taxes. Section 530 of the Revenue Act of 1978, as amended,[9] provides a company complete relief from FICA, FUTA, federal income tax withholding, and interest and penalties arising from the failure to pay employment taxes as a result of misclassification of a worker.

In general, a company will be entitled to Section 530 relief if:

- The company timely and consistently submitted all required Form 1099s for the worker during the tax period at issue;
- The company does not, and any predecessor company did not, treat workers performing substantially similar jobs as employees; and
- The company had a reasonable basis for its worker classification decision.

A company may be deemed to have a **reasonable basis** if the company relied on case authority or IRS published guidance, a decision in a past IRS audit; recognized industry practice, or other basis which is reasonable under the circumstances. To demonstrate a reasonable basis, it is critical that the company maintain documentation of what legal, regulatory or industry authorities or guidance it relied upon when deciding that a worker is an independent contractor.

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[9] Section 530 was never codified and is therefore not included in the Internal Revenue Code. However, it has been amended by the Tax Reform Act of 1986; and the Small Business Job Protection Act of 1996, as well as recognized and affirmed by the federal courts. Section 530(e), added under section 1122 of the Small Business Job Protection Act, defined for companies the circumstances under which they will qualify for Section 530 relief.

Companies can lower the risk of federal and state payroll tax liability by developing written protocols and analytical tools to guide decision-makers in the worker classification process. Jackson Lewis can assist employers in this process, keep you informed of industry-specific classification practices and current IRS audit initiatives, and obtain Section 530 relief, if necessary.

II. Employee Benefits and the Department of Labor and IRS

The analysis for classifying workers established by courts under ERISA is virtually the same as that commonly used by the courts and the IRS under the Internal Revenue Code ("IRC").[10] This is both good and bad news. That a company is not likely to receive conflicting determinations of a worker's status for purposes of compensation taxation and employee benefit rights and obligations is the good news. On the other hand, a determination by the IRS that a company is liable for payroll taxes would compel the company to review the worker's right to benefits under ERISA and the qualification status of the company's employee benefit plans under both the Code and ERISA.

Hazards of Misclassification: Workers, Pension Plans, and Plan Sponsors

Failure to correctly recognize when a worker should be classified as an employee has implications for the worker, the pension plan, and the plan sponsor. Following are some of the consequences:

- The worker may be entitled to participate in the company retirement plan going back to the date he or she would have been eligible and may have a right to sue the plan sponsor and administrator for damages (i.e., for wrongfully denied benefits) and breach of fiduciary duty.
- A 401(k) plan sponsor must contribute to any plan-matching and non-elective employer contributions, just as paid to other plan participants, 50% of the average deferral percentage amount for the employee's group, and investment earnings on incorrectly omitted plan assets to effectively put the worker in the position he or she would have been if the individual was properly classified and eligible to participate in the plan.
- A defined benefit pension plan sponsor must pay into the plan contributions sufficient to fund the participant's accrued benefit in accordance with the plan's terms.
- If the misclassification issue affects many independent contractors, particularly highly paid contractors, the plan may fail coverage or discrimination tests for the plan years in which the misclassified workers are added as a result of plan correction.
- The plan may be deemed to have violated the minimum participation standards under ERISA.[11]

The erroneous inclusion of workers in a pension plan who **are not** eligible for plan participation because they are independent contractors may result in the plan's disqualification for violation of the "exclusive benefit rule" under the IRC.[12]

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[10] *Nationwide Mutual Insurance Co. v. Darden,* 503 U.S. 318, 112 S. Ct. 1344, 117 L.Ed.2d 581 (1992).
[11] ERISA § 202, 29 U.S.C. § 1052.

The consequences of worker misclassification, particularly in the aggregate, can result in substantial monetary outlays for a plan sponsor and can force the sponsor to take the pension plan through the Employee Plan Compliance Resolution System (most likely the Voluntary Correction Program) to resolve plan qualification issues with the IRS. It is unclear whether correction of plan issues under the IRC may suffice to settle plan-qualification and fiduciary-duty issues arising under ERISA.

Hazards of Misclassification: Welfare Benefits Plans

As with pension plans, the failure to include a worker qualified to participate in a welfare benefit plan due to misclassification may expose the plan sponsor and administrator to liability for damages for benefits wrongfully denied and breach of fiduciary duty under ERISA. In some circumstances, such failure will result in the plan violating coverage and discrimination requirements under the IRC.[13] This may occur with self-funded health plans under current federal law. Disqualification of a welfare benefit plan under the IRC usually results in the employer contributions and, in some circumstances, plan benefits being includible in all participating employees' income.

Conversely, inclusion of a worker in a welfare benefit plan who is **not** eligible may result in a company being called upon to reimburse its insurance or reinsurance carrier for benefits paid by the carrier to the worker, as well as disqualification of the plan and resultant tax and potential fiduciary liability consequences.

Hazards of Misclassification: Cafeteria Plans

Misclassification of workers may cause havoc to a company's cafeteria plan, particularly under circumstances where a group of similarly situated workers are misclassified. The inclusion of one or more workers in a cafeteria plan who are **not** *bona fide* employees may disqualify the cafeteria plan in its entirety.[14] All benefits received by participants from the cafeteria plan are then includible in income in the plan year in which they are paid or accrued.[15]

Reclassifying a group of workers as employees may cause the plan to be disqualified in its entirety or may render benefits paid from the plan includible in the income of highly compensated or key employees.[16]

Avoiding and Correcting the Hazards of Misclassification

Companies that are considering retaining a significant number of individuals as independent contractors should exercise great care in the classification analysis and document their reasons for treating these workers as independent contractors rather than employees. Examine the potential impact of inclusion of these individuals in their pension and welfare benefit plans on annual coverage and discrimination testing results. Consider the cost of potentially having to restore benefits to these individuals as part of

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[12] Code § 401(c)(2). *See also, Raymond Yates MD, PC Profit Sharing Plan v. Hendin,* 541 U.S. 1, 124 S. Ct. 1330, 158 L.Ed. 2d 40 (2004) (profit-sharing plan not disqualified by the inclusion of participant/owner so long as one non-owner employee participates in the plan).
[13] Code § 105(h).
[14] Code § 125(d)(1)(A).
[15] Code § 125(b)(3).
[16] Code § 125(b)(1), (2).

an employee-benefits-plan correction. Short-term payroll tax savings derived from independent-contractor treatment may be more than offset by the long-term consequences of misclassification.

If a misclassification problem does not affect so large a group of workers that the plan fails coverage and discrimination requirements, employers to ensure their preventive strategies are effective. With the assistance of qualified counsel, draft employee benefit plans so that workers who are inadvertently excluded from plan participation due to misclassification are not permitted an award of past benefits.[17] Where a pension plan requires correction, consult counsel with substantial experience and expertise in plan correction and legal issue resolution.

III. Employment and Labor Law

Any uncertainty about how seriously the current Administration in the White House views the misclassification issue must be dispelled by President Barack Obama's fiscal year 2011 budget proposal. The Administration announced that the Departments of Labor and Treasury are working together to develop a proposal for amendments to the current laws to "eliminate incentives…for employers to misclassify their employees…." The 2011 budget for the DOL includes an additional $25 million to allow the DOL to focus its compliance and enforcement efforts against worker misclassification.

Fair Labor Standards Act

The analysis of the worker-classification issue under the Fair Labor Standards Act of 1938 ("FLSA")[18] differs from that established by the courts and Treasury Regulations for questions arising with regard to federal tax and employee-benefit-plan issues. Under the FLSA, a worker's status is determined using an "economic reality" test. Material to the analysis are such factors as:

- The extent to which the worker's services are an integral part of the company's business;
- The worker's opportunity for profit and loss; the amount of judgment the worker must possess as to how to compete in an open market; and
- The degree to which the worker maintains an independent business organization and operation are a material part of the analysis.[19]

Under the FLSA, therefore, the degree to which a worker clearly maintains a separate, independent and competitive business substantially affects the outcome of the classification decision.

Worker misclassification creates a "new deal" for the worker when the FLSA comes into play. The consequence of misclassification of one or more workers may be so substantial that an entirely new compensation scheme may be created, one that the company did not acquiesced or included in its budgeting process.

Workers newly classified as employees are subject to the minimum wage and overtime under the FLSA and may be entitled to additional compensation going back two to three years, depending upon whether the company's compliance failure is deemed willful. Liquidated damages are also customarily

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[17] IRS Technical Advice Memorandum (July 28, 1999); *Jaeger v. Matrix Essentials, Inc.,* 126 F. Supp. 2d 1337 (N.D. Ohio 2002).
[18] 29 U.S.C. §§ 201-291.
[19] *United States v. Silk,* 331 U.S. 704, 716 (1947); *Brock v. Mr. W. Fireworks,* 814 F.2d 1042 (5th Cir. 1987).

awarded misclassified workers. Certain state minimum wage and overtime laws and statutes of limitations for back pay claims that are more favorable to workers than the federal law can add to liability in misclassification cases.

Unions

Unions often see independent contractor as potential new members. The National Labor Relations Act applies only to employees.[20] A common tactic of labor unions seeking to organize workers to gain new members is to challenge the independent-contractor status of a group of workers that perform a certain function for companies in a particular industry. The unions then seek a court determination that the workers are employees entitled to the right to organize and bargain for the terms and conditions of their work.[21]

A determination of the workers' status against the target companies will result in the companies being deemed to have engaged in an unfair labor practice for failing to recognize the workers' right to organize and bargain. Moreover, the companies often are also found to have failed to provide the workers with the compensation and benefits commonly associated with being an employee.

IV. Employees in Professional Employer Organization (PEO) Arrangements

A misunderstanding of the relationship between a professional employer organization[22] ("PEO") and the user of PEO services ("Worksite Employer"), or the PEO and the worksite employee, is the main reason for needless litigation and expense. For a Worksite Employer, the decision to enter into a co-employment relationship through a PEO arrangement raises issues as to the applicability of federal and state payroll tax laws, workers' compensation laws, benefit administration regulations, and labor and employment laws. The current lack of federal legislation covering PEO arrangements has created a situation where workers covered by PEO arrangements are not uniformly included or excluded from "employee" status as to the laws governing employment tax liabilities, eligibility and participation criteria for pension and welfare benefits, and employment discrimination. Approximately 35 states require PEOs to be either licensed or registered. The myriad of state laws requires a different analysis that depends on the particular area of law in question.

As illustration, under the federal tax laws, workers in PEO relationships are included and excluded from treatment as "employees" depending on different legal tests applicable to a certain type of employee benefit or tax. Some of these legal tests depend on whether the PEO meets its obligation to provide benefits and withhold and pay payroll taxes. An example is the requirement that PEOs maintain multiple employer 401(k) plans.

Furthermore, proposed regulations applicable to cafeteria plans under IRC § 125 suggest that workers in a PEO arrangement should be included in the definition of "employee."[23] Under the recently enacted health care reform laws, workers in a PEO arrangement are included in the definition of "employee" for

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[20] *Bayside Enterprises, Inc. v. NLRB,* 429 U.S. 298, 97 S. Ct. 576, 50 L.Ed.2d 494 (1977).
[21] *See Sanderson Farms, Inc. v. NLRB,* 335 F.3d 445 (5th Cir 2003).
[22] Many state statutes, regulations and court decisions that govern PEO relationships, use the terms "employee leasing," "staff leasing services," and PEO interchangeably. PEO is the prevailing terminology and many licensing and registration statutes have been updated to reflect this.
[23] Prop. Reg. § 1.125-l(l)(ii).

purposes of determining whether a company is a "small employer" entitled to special tax credits.[24] Finally, the applicability of federal and state employment discrimination laws in PEO arrangements can also differ depending on the state, federal agency or court in question. While the Equal Employment Opportunity Commission has issued an Enforcement Guidance entitled, "Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms," that also governs PEO relationships, not all courts have embraced this guidance.

Companies considering whether to share employer responsibility with a third-party through a PEO agreement must carefully consider the impact the PEO relationship may have on their employer obligations under federal and state laws governing the employer-employee relationship. This process should involve the assistance of competent legal counsel.

V. New and Proposed Legislation

HIRE Act

The Hiring Incentives to Restore Employment Act[25] ("HIRE Act") gives employers who hire unemployed workers an exemption from the obligation to pay FICA taxes. It also gives these employers a tax credit of up to $1,000 for retaining the workers as employees for at least one year (52 consecutive weeks).

The HIRE Act exempts certain qualified employers from paying the 6.2 percent employer share of Social Security taxes on wages paid to qualifying workers from March 19, 2010, to December 31, 2010. The Social Security tax exemption generally applies to "qualified individuals" who are hired after February 3, 2010, following at least a 60-day period of unemployment where the individual has worked less than 40 hours.[26] The person hired may not replace an employee that has separated from employment involuntarily in order to be a "qualified individual" and may not be "related" to the employer as defined by IRC § 51(i)(1).[27]

The qualifying individual's wages during the last half of the year must not diminish more than 20 percent compared to the wages paid during the first half of the year for the employer to receive the HIRE Act tax credit.

Recently, the IRS published a "Q&A" to assist companies to ascertain whether they are entitled to take advantage of the HIRE Act's tax exemption and tax credit provisions.[28] This Q&A may be accessed by searching the term "HIRE Act" on the IRS website at www.irs.gov.

Health Care Reform

Beginning 2014, the Patient Protection and Affordable Care Act[29] as amended by the Health Care and Education Reconciliation Act of 2010[30] (together, "Health Care Reform") will penalize an employer with

[24] 26 U.S.C. § 45R(e)(1)(B).
[25] P.L. 111-147 (2010).
[26] A worker must have worked less than 40 hours during the 60-day period on the date the worker becomes employed in order to be a "qualified individual" under the HIRE Act. 26 U.S.C. § 3111(d)(3).
[27] *See also* 26 U.S.C. § 152(d)(2)(A)-(G).
[28] Available at www.irs.gov/businesses/small/article/0,,id=2200746,00.html.
[29] P.L. 111-148 (2010).
[30] P.L. 111-126 (2010).

50 or more full-time employees if just one of its full-time employee receives government-subsidized health coverage. (A full-time employee is one working 30 or more hours per week.)

The Health Care Reform law will also require an employer that provides and contributes to the cost of its employer-sponsored health coverage to provide monetary vouchers to certain employees to purchase *other* (i.e., other than the employer's) health coverage. Employers who fail to follow the provisions of the Health Care Reform law will pay a penalty for violating their obligation to "share responsibility" for health insurance coverage for employees with the states and the federal government.

If an employer has more than 200 full-time employees, new employees must be enrolled automatically in the employer's group health plan, or other penalties apply. Failure to report to the Treasury the existence of an employee entitled to minimum essential coverage under the employer's group health plan will also result in penalties.

Once the Health Care Reform law becomes fully effective, the potential monetary-liability exposure to a company that fails to identify which workers are "employees" increases dramatically. It is critical, therefore, that companies develop and implement policies, procedures and analytical tools to help them make the correct classification decisions.

Proposed Legislation

In late April, the "Employee Misclassification Prevention Act" was introduced in the House of Representatives and the Senate as H.R. 5107 and S. 3254, respectively. The bills propose amending the FLSA and Social Security Act to require employers to maintain records of workers who provide services for compensation and to provide certain written notices to workers concerning their status and their right to seek assistance from the Department of Labor if they believe they are misclassified. Special penalties would be imposed on employers who misclassify workers. A legal presumption that a worker is an employee whenever a company fails to comply with the recordkeeping and notice requirements is also a feature of the bills. This may be rebutted with evidence supplied by the company supporting the independent contractor's status, but the burden of proof for the company will be high, i.e., by "clear and convincing evidence."

Another piece of legislation, the "Taxpayer Responsibility, Accountability, and Consistency Act," introduced into Congress as H.R. 3408 and S. 2882, would substantially limit the circumstances under which a company would be entitled to relief from payroll tax liability where the company misclassified a worker as an independent contractor. The proposed legislation would also increase, under the IRC, the penalties for misclassification of workers and failure to withhold and pay certain payroll taxes.

If enacted, these two pieces of legislation would dramatically change both the legal exposure and the monetary consequences of worker misclassification for companies.

VI. Conclusion

Now is an excellent time for companies to review their workforce and determine whether they have potentially misclassified individuals as independent contractors. Companies can begin to develop or update written policies and procedures for review and determination of the nature of their relationships with every worker they retain to provide services.

Treating workers providing similar services, but in various company locations, similarly is critical to a company's ability to defend a worker classification decision. Therefore, companies that retain workers in more than one state should ensure that variances in laws governing worker classification are recognized and taken into account in the classification decision. This is true for both federal and state law purposes. Thus, while it may satisfy one state's law to deem a worker an employee and another state would recognize a worker performing similar services retained under contract as an independent contractor, current and proposed federal laws increasingly are focused on consistent treatment of workers over time and between workforce locations.

Jackson Lewis is uniquely qualified to assist companies to recognize, prepare for and, where necessary, remedy legal issues that arise in connection with worker classification on both the federal and state levels. The firm's attorneys are located in, licensed in and are familiar with state laws governing the employment relationship across the country. Our experience extends to policy and procedure development, internal due diligence, and administrative audit defense. We stand ready to assist you with worker classification.

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