



# Are Your Independent Contractors Really Independent Contractors?

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Employers that hire independent contractors must be extra cautious to ensure that these workers are classified correctly, because federal and state governments have signaled their intent to more seriously investigate misclassification issues. Employers that run afoul of the relevant statutes and regulations will face regulatory fines, back tax implications, wage and hour claims, workers' compensation issues and a host of other problems.

For various reasons, employers - especially those in the building and trades professions - often find it desirable to classify certain workers as independent contractors, but employers need to know that enforcement agencies often look at classification decisions very closely. The government has a keen interest in ensuring that as many workers as possible are classified as employees - not only do such workers have greater employment law protection, but classification of workers as independent contractors deprives both Washington, D.C., and Salem of tax revenue, because they are not subject to payroll taxes.

One estimate revealed that the federal government lost an estimated \$50.7 billion in tax revenue in the past 10 years due to such classification of workers. Moreover, organized labor has a vested interest in ensuring as many workers as possible are considered employees, because they are then potential union members.

The revenue shortfalls at the state and federal levels during the past several years appear likely to continue for the foreseeable future, and governments continue to search for ways to compensate. Governments likely will continue to crack down on worker misclassification. Moreover, the heightened government attention to these issues likely will lead to more private civil lawsuits, because the damages available in such cases make them very attractive to plaintiffs' attorneys.

In light of these developments, classify employees carefully and ensure that any individuals classified as independent contractors are, in fact, classified properly. It is far better to internally uncover and proactively address any potential misclassification issues, rather than learn initially of such issues when confronted by a governmental audit or a lawsuit.

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