



Misclassifying Workers as Independent Contractors Carries a Steep Price

Publication

12.28.11

California now has the nation's most punitive laws against worker misclassification.

While misclassification has always been illegal, businesses found to have incorrectly classified employees as independent contractors now face civil penalties ranging from \$5,000 to \$15,000 per employee, and \$10,000 to \$25,000 per employee in instances involving "a pattern and practice" of misclassification.

On top of that, businesses found to have misclassified workers may be required to post notices on their Web sites detailing the misclassification and directing misclassified workers to California's Labor Workforce Development Agency. These penalties are in addition to a long list of other penalties, fines and back wages that may be owed for failure to pay wages correctly.

The motivation for such drastic measures? Money. And more specifically, tax revenue. Workers classified as independent contractors are not taxed with every paycheck as employees are, nor are employers required to pay payroll taxes on workers classified as independent contractors. The state apparently hopes that its punitive measures will deter businesses from even considering classifying individuals as independent contractors.

But the state is seeking to deter more than just businesses. The state also quietly included a provision designed to expand the scope of the new law. Third parties who simply advise businesses to classify workers as independent contractors now face joint and several liability for advising businesses to misclassify employees. Squarely in the state's cross-hairs are accountants and outside human resources consultants who provide consulting services to businesses. Attorneys and internal employees making recommendations to their employer are generally excluded from liability.

The new laws became effective on Oct. 8, 2011—the day on which Governor Jerry Brown signed the bill. Misclassification is obviously a risky proposition.

This article appeared in the December 28, 2011 issue of *Accounting Today*.

