



On Assignment

The IRS Cracks Down On Misclassification

Regardless of the size of your company, worker misclassification should be on the list of concerns you are addressing. Unfortunately, many companies may be misclassifying their workers, creating tremendous financial risk. The Department of Labor (DOL) estimates that 30% of employers may be misclassifying their workers, while other industry experts feel that number is closer to 40%.

Misclassification—whether unintentional or deliberate—is under constant scrutiny by parties on all sides of the issue, but nobody is taking it as seriously as the Internal Revenue Service.

The IRS has good reason for ramping up on the investigation and enforcement of misclassification; they are seeking to recoup what in their estimation is billions of dollars in lost tax revenue as a result of workers being misclassified.

In September 2011, the IRS unveiled the Voluntary Classification Settlement Program (VCSP), allowing employers to voluntarily reclassify independent contractors as employees for federal taxation purposes.

Over the past five years, the IRS has modified and updated the VCSP twice, yet employer enrollment in the voluntary program has been minimal, possibly out of concern that doing so would invite further scrutiny from other agencies and create even more legal exposure.

In 2014, the IRS launched the SS-8 program, which allows individual workers who feel they have been misclassified to initiate a review of their independent contractor status. This indicates a comprehensive approach to misclassification, which includes an increase in audits and additional funding and resources for the purpose of investigating and enforcing compliance.

As part of the effort to improve compliance and present a united front to employers on the issue, the IRS and the DOL signed a memorandum of understanding. This memo allows for the sharing of information and resources between the two agencies, as well as increased collaboration to increase compliance with both federal tax requirements and labor laws.

Given the marked increase in resources and funding for investigation and enforcement of the issue, your company should be proactively examining your employment practices to formulate a plan to ensure compliance and minimize the risk and exposure.

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