



# EMPLOYMENT LAW UPDATE

Ezra Brutzkus Gubner LLP, Warner Center, 21650 Oxnard Street, Suite 500, Woodland Hills California 91367

## INDEPENDENT CONTRACTOR MISCLASSIFICATION ENFORCEMENT



The U.S. Department of Labor has highlighted its ongoing and increased enforcement in the area of independent contractor misclassification which occurs when a company hires "independent contractors" who do not legally qualify for that status and should have been classified as employees.

The proposed DOL budget for 2012 includes a new multi-agency Misclassification Initiative designed to strengthen and coordinate Federal and State efforts to enforce labor violations that result from the misclassification of employees as "independent contractors" and to deter such violations in the future. The DOL has requested over \$15 million to add an additional 3,250 investigations. These investigations will be directed to industries with higher rates of violations, such as construction, child care, home health care, grocery stores, janitorial, business services, poultry and meat processing, and landscaping. The DOL seeks to reduce labor law abuses, such as minimum wage and overtime which may be owed to improperly classified workers. The IRS and state tax authorities also pursue misclassification cases in order to recover payroll taxes which should have been paid on behalf of the workers. In some cases, employers can face criminal sanctions for tax fraud and workers' compensation fraud.

DOL's Wage and Hour Division (WHD) is considering a rule that would require employers, before declaring that a worker is not an "employee" under the FLSA, to perform a written analysis of the worker's status, to disclose the analysis to the affected worker, and keep a record of the analysis in their files for review should a Wage & Hour investigator request this information.

LEGAL STRENGTH  
MEETS BUSINESS SENSE

