

White House 2013 Budget Targets Employee Misclassification

by Ramon Rivera on March 13, 2012

Earlier this month, the Obama Administration released its proposed budget for fiscal year 2013. It reveals that New York and New Jersey employers should expect heightened enforcement and regulatory activity, particularly in the area of employee misclassification.

As detailed in the budget proposal, the Department of Labor's Wage and Hour Division has requested an increase of \$3,800,000 increased enforcement related to misclassified workers. It also hopes to hire 35 additional full-time employees. With respect to how those funds will be allocated, the budget justification states: "To combat the problem of misclassification, WHD will explore options for additional memoranda of understanding to increase the coordination and sharing of information between WHD and other stakeholders."

In a web-chat regarding the 2013 budget, Nancy Leppink, Deputy Administrator of the WHD, pointed to the division's recent successes to make the case for additional funding. She noted, "In FY 2010, the division collected nearly \$4 million in back wages for minimum wage and overtime violations that were a result of employers misclassifying their employees as independent contractors, or otherwise not treating them as employees. This is a significant increase over FY 2008, when WHD collected just over \$1.3 million in unpaid back wages for the same reason."

New York and New Jersey employers are permitted to use non-employees employees, such as independent contractors, so long as they can show that the decision was not intended to skirt state and federal labor laws. Therefore, if your business relies on the use of independent contractors, it is imperative to take steps to ensure that your classification process would survive the scrutiny of a DOL audit.

For more information about the tax implications of using independent contractors, we also encourage you to check out a recent post on our Tax, News, and Estates Blog.