



Legal Alert: Proposed Legislation Focuses on Misclassification of Workers

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The Employee Misclassification Prevention Act, recently introduced in both House (HR 5107) and Senate (SB 3254), would amend the Fair Labor Standards Act by imposing additional record keeping and notice requirements. Specifically, employers would have to provide each hired individual written notification of the following:

- that individual's classification (employee or non-employee);
- a statement directing the individual to the Department of Labor website;
- the contact information for the local Department of Labor office;
- for any person classified as a non-employee, a statement that: "Your rights to wage, hour, and other labor protections depend upon your proper classification as an employee or non-employee. If you have any questions or concerns about how you have been classified or suspect that you may have been misclassified, contact the U.S. Department of Labor"; and
- any additional information prescribed by the Secretary.

Additionally, employers would be required to keep records, similar to the work and wage records kept for employees, for each contractor hired.

The Act provides employers six months from the bill's effective date to notify current employees/contractors of their classification. Future workers would be informed of their status at the time of hire. Failure to comply with notice requirements would result in a presumption that non-employees, such as independent contractors, are in fact, employees. To rebut this presumption, an employer would have to show clear and convincing evidence establishing otherwise.

Violations of this Act will be subject to civil penalties of at least \$1,100 up to \$5,000 per violation.

The Bottom Line

This Act, in conjunction with President Obama's budget proposal for the 2011 fiscal year, reaffirms Congress' intentions to address the misclassification of workers as independent contractors. Accordingly, employers may want to consider reviewing the classification of any workers

that have been designated as independent contractors. Any such review should be conducted at the direction and under the guidance of experienced employment counsel.

If you have any questions regarding this legislation or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Betty Joseph, bjoseph@fordharrison.com.