

**Is Your Company Prepared?:
Avoid Wage and Hour Mistakes that Could Cost You?**

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The United States Department of Labor is focused on ensuring that employers are properly classifying workers as i) exempt or non-exempt and that ii) workers are not improperly classified as independent contractors when they are, in fact, employees. The United States Department of Labor's Strategic Plan for 2011 through 2016 has made proper payment of workers a priority. In fact, for companies using independent contractors, the administration's budget includes \$12 million for **increased** enforcement of wage and overtime laws in cases where workers have been misclassified.

Does Your Company Use Independent Contractors?

There are different federal and state criteria defining an independent contractor relationship. Requirements are becoming stricter and more heavily enforced. More now than ever, companies need to closely review whether their company properly classifies individuals as independent contractors pursuant to applicable laws in your state. For example, New Jersey and Pennsylvania have passed in recent years laws prohibiting and penalizing the misclassification of workers in the construction industry. Additionally, the franchise relationship (franchiser/franchisee) has been examined and scrutinized, by the Department of Labor and the courts, for potential worker misclassification. In addition to the Department of Labor, there are other agencies or entities who will examine this independent contractor relationship. These include the state Department of Labor; state Office of Unemployment Compensation Benefits, the IRS, and workers' compensation carriers to name a few. Each agency's criteria differs. Nonetheless, some common factors to show an independent relationship include:

1. The amount of the contractor's investment in his business, his facilities and equipment;
 2. The nature and degree of control which worker has over how the worker does his job;
 3. The contractor's opportunities for profit and loss in the business;
 4. Is the work performed by independent contractor a key or integral aspect of your business?
 5. Does the worker work for others or put himself out to the public as available and able to work for others; and
 6. The degree of independent business organization and operation.
- Since the United States Department of Labor is ramping up at full speed and has made targeting misclassification of workers a priority, companies who utilize independent contractors must put this issue at the top of their priority list and be sure these relationships satisfy the applicable criteria. Misclassifying an individual can cost companies, perhaps years, of unpaid overtime due employees, in addition to fines and penalties.

Another potential wage and hour issue is failure to pay overtime when due which is discussed below.

Jump start your action items in 2011. Many companies want to put I place an employee handbook but have not done so yet for monetary reasons. PA and NJ companies-- When was the last time your employee handbook was reviewed? Outdated policies can be as dangerous as having no policies at all. Call for a handbook tune-up and receive a special discounted flat rate available to our followers. Can your company really afford to wait?

About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions

about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or NJDCR
- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

Please contact the firm to find out how the Law Office of Beth Lincow Cole can protect your company.