



Legal Alert: California's New Law Imposes Stiff Penalties on Employers who Misclassify Employees as Independent Contractors

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Executive Summary

California's Governor Jerry Brown recently signed into law a bill that will dramatically increase penalties for employers who willfully misclassify employees as independent contractors. The new law compels a \$5,000 to \$25,000 fine for each violation and also prohibits companies from charging fees or making any other deductions from the pay of independent contractors who have misclassified.

An Employee By Any Other Name...

Designed to prevent the use of "independent contractors" in place of employees, SB 459 creates a new section in California's Labor Code. The new section makes it unlawful (1) to willfully misclassify an individual as an independent contractor, and (2) to charge misclassified independent contractors fees or make deductions from their compensation for items such as goods, materials, maintenance, licenses, or repairs. An employer who willfully misclassifies an independent contractor may be subject to a penalty of \$5,000 to \$15,000 for each violation, and, if the employer is found to have engaged in a "pattern and practice" of misclassifying employees as independent contractors, \$10,000 to \$25,000 for each violation.

In addition, any employer found to have violated the new law will be required to post a notice to employees on its internet site, or, if it does not have an internet site, another prominent location. The notice must provide the following information: (1) the employer was found to have violated the law; (2) the employer has changed its practices; (3) the employer was ordered to post the notice; and (4) if any employee wishes to complain about the employer's practices, the employee may contact the Labor and Workforce Development Agency (with address provided).

Further, any licensed contractor who has violated the new law will be required to transmit to the Contractors' State License Board a copy of the court or agency determination of the violation. The determination will serve as the basis for a disciplinary action by the license board against the licensee.

Employers' Bottom Line:

While the benefits of utilizing independent contractors may be significant, the consequences of misclassifying an employee as an independent contractor will now be very costly. To avoid potential liability, employers should make sure their independent contractors are correctly classified. When determining whether an individual is an employee or independent contractor, the most important question to ask is how much control the employer maintains over the details of the work. Does the employer have the right to control both what is done and how it is done? The greater the amount of control the employer exercises over the work performed by the individual, the more likely the individual is an employee, not an independent contractor. However, the analysis is far more complex, involving a detailed analysis of a variety of factors. Therefore, employers are advised to audit their practices with the help of experienced counsel.

If you have any questions regarding the new law or other labor or employment law issues, please contact the author of this Alert, Michelle Rapoport, an attorney in our Los Angeles office, at mrapoport@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.