

Misclassifying Workers As Independent Contractors: California Considers New Penalties

The costs associated with erroneously classifying workers as independent contractors will rise dramatically if Governor Brown signs Senate Bill 459 into law. SB 459 was passed by the California legislature on September 8, 2011, and is currently waiting signature or veto by Governor Brown. If passed, the bill will impose significant new penalties on employers who erroneously classify workers as independent contractors.

SB 459 has three significant features that should worry employers in California. First, the bill makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor or to charge that individual a fee or make any deductions from that individual's compensation that would be prohibited were that individual treated as an employee under the Labor Code. Because "willful" is defined with the relatively low standard of "voluntarily and knowingly," it could potentially sweep up many employers who are simply erroneous in their classification of independent contractors.

Second, SB 459 imposes penalties of \$5,000 to \$15,000 for each violation. Under the bill, each deduction or fee wrongfully imposed on an individual misclassified as an independent contractor may give rise to a separate penalty. If either a court or the California Labor Workforce Development Agency determines that the employer has engaged in a pattern or practice of violations, the penalties are increased from \$10,000 to \$25,000 per violation.

Finally, if an employer is found to have violated the law, the employer must post a notice informing all employees and the general public that it has committed a violation by misclassifying an employee. The notice must be posted for one year, must be signed by an officer of the company and must inform employees and the general public that the employer has changed its practices.

Even without SB 459, there are serious economic risks associated with the misclassification of individuals as independent contractors. If passed, SB 459 will significantly increase those risks. If you have any questions about SB 459, the proper classification of individuals as independent contractors, or any other issue relating to employment law, please contact one of our attorneys:

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