

New Penalties For Misclassifying An Employee As An Independent Contractor

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Senate Bill 459 went into effect on January 1, 2012 and imposes increased penalties against any employer in California who willfully misclassifies an employee as an “independent contractor”. Willful misclassification is defined in the new law as “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”

Any company or other person who the Labor and Workforce Development Agency or a court determines has violated the law is subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation (in addition to any other penalties or fines permitted by law). If engaging in a pattern or practice of violations, the person or employer is subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation (in addition to any other penalties or fines permitted by law). [Cal.Labor Code, Section 226.8 (b) and (c)]

The new law also requires any employer who has violated the law, as determined by the Labor and Workforce Development Agency or a court, to display a notice prominently on its website that it has engaged in willful misclassification. The notice must also include other information required by the statute and remain posted for one year from the date of the final decision or order.

A company considering classifying any portion of their workforce as independent contractors should consult with a California attorney experienced in employment and business matters. Tharpe & Howell has an experienced team of attorneys working with local companies to minimize risks and exposure as they develop their employment strategies.

Our [employment and labor law attorneys](#) understand these issues and can assist your business.

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