

On October 9, 2011 S.B. 459 was signed into California law. It increases penalties for employers who mis-classify their employee as independent contractors. The new law makes it unlawful to:

1) willfully misclassify an individual as an independent contractor, or

2) charge a fee or make deductions from payment to anyone willfully mis-characterized as an independent contractor if doing so would have violated the law if the individual had been properly classified as an employee.

A violation subjects the employer to a civil penalty of not less than \$5,000 and not more than \$15,000. Penalties increase from \$10,000 to \$25,000 where the employer is found to have engaged in a “pattern or practice”. Also, if the offending employer is a licensed contractor, the law also requires that the contractor be referred to the Contractors’ State License Board for disciplinary proceedings.

Violators will also be required to prominently post a notice on its website that 1) it has committed a serious violation of the law, 2) it has changed its business practices to comply with the law, 3) includes information how any employee who believes he or she has been improperly mis-classified as an independent contractor can complain, and 4) the notice has been posted pursuant to state order. The notice must be signed by an officer of the employer and must remain up for one year. If the employer has no website, the notice must be prominently posted “in an area which is accessible to all employees and the general public.”

The new law will also allow employees to recover attorney’s fees under the Private Attorney General Act seeking to assert violations of the Labor Code and obtain a portion of the resulting civil penalties.