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Employers Beware: United States Department of Labor and Internal Revenue Service Team up to Combat Misclassification of Workers as Independent Contractors

September 28, 2011 by Randi W. Kochman

On September 19, 2011, the United States Department of Labor (“DOL”) and the Internal Revenue Service (“IRS”) announced the agencies’ agreement to jointly combat the misclassification of workers as independent contractors. Specifically, the DOL and IRS’s joint Memorandum of Understanding (“MOU”) indicates that their efforts are aimed at ending some employers’ practice of misclassifying employees. In signing the MOU, at the DOL ceremony Secretary of Labor Hilda L. Solis declared: “We’re here today to sign a series of agreements that together send a coordinated message: We’re standing united to end the practice of misclassifying employees.” Employers must take heed.

Various state and labor officials have signed on to the MOU, including Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Utah, Washington and New York’s Attorney General. State labor agencies in Hawaii, Illinois and Montana have also entered into memorandums of understanding with the DOL’s Wage and Hour Division. By signing on to the MOU, the agency and state signatories may more freely share information and coordinate law enforcement. Employers that utilize “independent contractors” in any manner are well advised to assess their relationships and determine whether the classification can withstand what will surely be heightened scrutiny from various enforcement agencies.

Of course, as independent contractors do not necessarily receive minimum wage or overtime pay, unemployment insurance, worker’s compensation or Social Security benefits, they lose valuable protections if they become disabled or unemployed, and

thus become a drain on the system. In addition, employers do not pay employment taxes on compensation paid to such contractors, which deprives the government of substantial tax revenue. For all these reasons, the government is well incentivized to root out inappropriately classified relationships. The DOL and IRS have made clear their intention to do just that.

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