

Penalties for Misclassifying Employees as Independent Contractors

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Employers are sometimes confused whether individuals providing services should be classified as employees or independent contractors. Getting it right is now even more important as Connecticut has recently amended its workers' compensation laws to increase the penalties for misclassifications. Previously, employers who knowingly and improperly characterized employees as independent contractors, and therefore failed to provide required workers' compensation coverage, were considered guilty of a class D felony and subject to a fine of \$300 for each misrepresentation.

The amendments, which were effective October 1, 2007, now require the Workers' Compensation Commission to issue a stop work order preventing any business from continuing to operate if it determines the company knowingly classified any employee as an independent contractor in order to avoid its obligation to provide workers' compensation coverage. A stop work order will remain in effect until the company comes into compliance and any company working in violation of a stop work order will be fined \$1,000 for each day it violates the order. In addition, employers who fail to cooperate in any investigation are subject to fines of up to \$250 for each day of non-cooperation.

Misclassifications also subject employers to liability under wage and hour, unemployment compensation, and benefit laws. The new penalty of a stop work order, however, adds considerable risk for wrongly categorizing employees as independent contractors. Employers should review their characterization of anyone being treated as an independent

contractor to ensure they meet the statutory requirements necessary for independent contractor status, which include the contractor's right to control the means and methods of work, a showing that the work being performed is outside the usual course of the employer's business, and an ability for the contractor to work for other employers.

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