

Department of Labor Update

DOL Pursues Employer of Misclassified Independent Contractors



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This Legal Update frequently warns employers of the risk of improperly classifying workers as independent contractors. Employers are often too cavalier about concluding that they have satisfied the myriad of independent contractor status criteria, and rest with the false sense of security provided by independent contractor agreements. Government agencies can and frequently do challenge independent contractor status, written agreements notwithstanding.

DOL Scrutinizes Independent Contractor Status

The U.S. Department of Labor is one of several government agencies that may take issue with improper classification of workers. Primarily, the DOL is concerned with the failure to pay such workers minimum wage and overtime. A properly classified independent contractor is not subject to these wage and hour laws. But where a company mistakenly classifies a worker as independent when he ought to be classified as an employee, a worker's excess hours may lead to minimum wage and overtime liability.

California Company Hit Hard

A Southern California cleaning service and its owners have found themselves in such a predicament. According to a recent DOL press release, the investigation by the Labor Department's Wage and Hour Division leading to the 2007 order determined that the Gardena, California-based Southern California Maid Services and Carpet Cleaning had improperly classified 385 employees as independent contractors and failed to pay them at least minimum wage and overtime as required under the federal Fair Labor Standards Act (FLSA). In a court order signed Aug. 21, 2007, a federal judge ordered the company and its owners to pay the workers \$3.5 million in back wages plus \$1,058,973 in liquidated damages.

Pursuant to the court's April 2009 order, the cleaning company must also now pay \$227,791 in post-judgment interest plus \$2,000 per day in fines for contempt of court. The owners must also each pay fines of \$200 per day.

"The Department of Labor will not hesitate to take action to ensure workers receive the com-

pensation they have worked hard for and earned," blandly observed Hilda L. Solis, the newly appointed Obama administration Secretary of Labor.

According to the DOL press release, the Wage and Hour Division learned of the employer's practices through its participation in the Employment Education and Outreach (EMPLEO) partnership. EMPLEO is an alliance of organizations and government agencies that assist Spanish-speaking workers and employers with work-related concerns.

To avoid similar misfortune, before hiring independent contractors, companies should carefully evaluate state and federal independent contractor criteria, and seek legal advice in the face of any uncertainty.

Free Resources

Need help with independent contractor laws? Request our complimentary independent contractor guideline. Email Chris O l m s t e d a t c w o @ b a r k e r o l m s t e d . c o m .