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Feds And New York State Jointly Target 'Independent Contractor' Misclassification

The U.S. Department of Labor (DOL) and New York Attorney General are going after worker misclassification in a [sweeping sharing deal](#). Inking it puts federal and New York labor investigators on the same page. These are only the latest state agencies to partner with the DOL.

In the last 2 years alone, the DOL claims to have collected over [\\$18.2 million in back wages](#) for more than 19,000 workers who were misclassified as "independent contractors." That's a 97% increase in back wages collected. Of course, the states generally collect their share too, and that motivates the deals.

Employers—even those who diligently try to follow the amorphous standards for who is an employee—should be looking over their shoulders. The dollars at stake in such contests can be catastrophic. And with a mix of state and federal taxing and labor, workers' compensation and unemployment agencies all probing for dollars, one dispute often triggers another.



(Image credit: dol.gov)

The press release on this New York and federal deal talks about getting employers that are bad actors, and leveling the playing field. That kind of rhetoric should make New York employers take notice. Sharing data means the escalation in cases is faster.

And both the feds and New York note that the possibility of **criminal** cases is real. The New York State Attorney General's office brings select cases to enforce the state's labor laws, including civil and criminal cases. For more information, click [here](#).

Does this mean everyone is an employee? Of course not. In fact, even the feds say that there's nothing illegal about having *bona fide* independent contractors. Still, what's real and what isn't?

The DOL notes that deals with workers:

"may not be used to evade compliance with federal labor law. Although legitimate independent contractors are an important part of our economy, the misclassification of employees presents a serious problem, as these employees often are denied access to critical benefits and protections—such as family and medical leave, overtime compensation, minimum wage pay and Unemployment Insurance—to which they are entitled. In addition, misclassification can create economic pressure for law-abiding business owners, who often find it difficult to compete with those who are skirting the law."

The DOL isn't the only federal agency that cares about this issue. The DOL says its mission is to foster, promote and develop the welfare of wage earners, job seekers and retirees; to improve working conditions; advance opportunities for profitable employment; and to ensure work-related benefits and rights.

What other federal agency cares about misclassification? The IRS cares big time. After all, it gets tax money right away via withholding on employee wages. It may never get money from independent contractors.

What's more, Social Security taxes are collected via withholding on wages. The IRS has a notoriously hard time collecting self-employment taxes from independent contractors.

If you have a business in New York State and use independent contractors, expect more scrutiny. Other states with such deals include California,

Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Utah and Washington. All have signed similar agreements. More information is available on the Department of Labor's misclassification website at www.dol.gov/misclassification.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.