

## Independent Contractor v. Employee Misclassification

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# \$2.72 billion



- That is the GAO's 2009 estimate of the amount of federal revenue lost in 2006 due to employee misclassification.



# + Broad Overview

- A company pays workers for their services. Each of those workers is either an employee or an independent contractor. Most of those workers in this country are employees.
- Many employers - large and small – are classifying their employees as independent contractors.



# + Benefits to classifying worker as Independent Contractor

- **Eliminates payroll taxes**
  - FICA (Social Security and Medicare)
  - FUTA (unemployment tax)
  - State unemployment insurance premiums

*An employer can save up to 30% of payroll costs by eliminating employer-side FICA, FUTA, and state taxes*

# + Benefits to classifying worker as Independent Contractor

## ■ Other hard costs

- Employer does not pay workers compensation premiums.
- Employer does not have to pay overtime or minimum wage.



# + Other Employer Protections to Classifying Worker as I.C.

- Protection from employment discrimination suits, unemployment claims, workers comp claims, collective bargaining & employees' ability to join union.
- Competitive advantage: gives the ability to underbid competitors because employer does not have the overhead. Applies in construction, trucking, etc.



# How does the misclassified worker lose?



- (1) minimum wage and overtime rules
- (2) the right to a safe and healthy workplace and workers' compensation coverage if injured on the job
- (3) protections against harassment and discrimination
- (4) unemployment insurance if he or she is discharged from work and other "safety net" benefits
- (5) paid sick, vacation, health benefits provided to "employees"
- (6) the right to organize a union and to bargain collectively for better working conditions, and
- (7) Social Security and Medicare payments credited to employee's accounts



# Government Crackdown

State and federal agencies teaming together



- Forming task forces
- Getting the word out to workers
- Sharing information among agencies
- Passing new laws with harsh penalties.
  - Includes criminal penalties
  - The business could be shut down
- IRS amnesty program.





How do you determine how to classify a worker?

*The is no easy answer to cover all situations. States have their own factors.*

- Specialized skill
- Invests own capital
- Uses own tools and equipment
- Gets paid per project, for result
- Determines the manner and methodology used to complete a task – not just outcome
- What do the parties call themselves?

# + Two examples of independent contractors

- Plumber
- Computer Technician



# + 10 Questions to Ask

- Have all contractors signed written Independent Contractor agreements and do they receive Form 1099's?
- Are the contractor's duties integrated with core business operations, or does he or she perform non-essential business activities?
- Must the contractor's services be performed personally?
- Must the contractor's services be performed on-site, or during specific hours?
- Does the contractor perform full-time services to only one company, or work for other companies also?

# + 10 Questions to Ask (#6-10)

- Does the contractor receive employee benefits such as insurance coverage or paid time off?
- Does the contractor do the same job as or work side-by-side with company employees?
- Does the contractor have a supervisor who directs his or her work, or does the contractor supervise company employees?
- Is there a non-compete agreement that would prevent the contractor from providing services to other employers?
- Is the contractor expected to attend company meetings or periodic or ongoing training as to procedures and methods to be used?

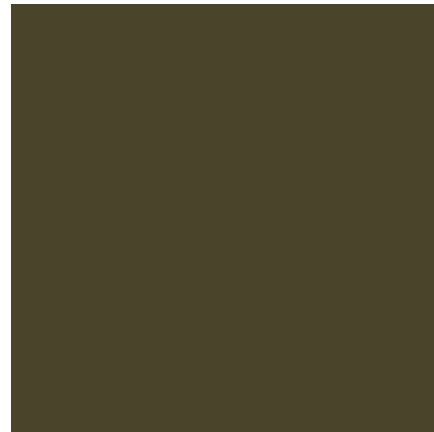
# + Conclusion / Things to Consider

- Independent contractors can be legitimate, and they have their place
- Employers can save costs by misclassifying employees as independent contractors
- Who suffers?
  - Employees lose money and job protections
  - State and federal governments lose revenue
- Not worth the risk of knowingly misclassifying workers



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Employee v. Independent  
Contractor Misclassification

Thank you for attending!