

EMPLOYMENT & TAX LAW Alert

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This publication is intended for general information purposes only and does not constitute legal advice.

The reader should consult legal counsel to determine how laws apply to specific facts and situations.

The Internal Revenue Service Steps Up Employment Tax Compliance and Enforcement Efforts: Be Sure Workers are Properly Classified.

The Internal Revenue Service is targeting over 6,000 companies for employment tax and related audits, with a primary objective to determine whether companies are properly classifying their workers as either employees or independent contractors. Audit activity by the IRS (as well as states) will also target deferred compensation and 409A issues, executive compensation, taxable fringe benefits and business expense reimbursements. President Obama has budgeted over \$7 billion in receipts coming from increased enforcement and audits by the IRS.

Whether an individual is an employee or an independent contractor is highly fact-driven based on a long list of factors with many gray areas open to interpretation. Workers in the construction, ground delivery, car service, trucking and consulting fields, and leased employees, may be more closely examined than other fields. Depending on an employer's particular circumstances, an employer might consider taking the following proactive measures:

- Conduct a thorough review of the company's current worker classifications, compensation arrangements and benefit programs to identify any potentially deficient documentation or classifications.
- Modify its relationship (behaviorally, financially, and the manner in which it is documented) with workers as necessary to strengthen the argument that the worker has been properly classified.
- Obtain professional assistance to remedy any violations or misclassifications.

This Alert highlights some of the important issues raised by increased employment tax compliance efforts but is not an exhaustive discussion of these matters. Please contact any of our tax or employment attorneys for additional details regarding the classification of your workers, employment taxes, or related questions.