

**EMPLOYER ALERT**

**THE CRACKDOWN**

The IRS, the United States Department of Labor, the Ohio Attorney General, the Ohio Department of Job and Family Services, the Ohio Bureau of Workers Compensation, and the Ohio Department of Taxation are, reportedly, cracking down on the misclassification of workers or, in other words, misclassifying a worker as an independent contractor when, in fact, the worker is an employee.

A previous report issued by the Ohio Attorney General estimated that worker misclassification costs the State of Ohio an estimated \$100 million in payments for unemployment compensation, more than \$510 million in BWC premiums, and almost \$180 million in forgone state income tax revenues.

The consequence to an employer for misclassifying a worker can be severe, as the misclassifying employer is at risk for fines, penalties, premiums, back wages, and litigation regarding the same.

As part of the crackdown, there is proposed federal and state legislation.

At the federal level, there was a hearing of the Health, Education, Labor and Pensions (HELP) Committee titled "Leveling the Playing Field: Protecting Workers and Businesses Affected by Misclassification" and U.S. Senator Sherrod Brown introduced legislation to prevent worker misclassification. That proposed legislation is titled The Employee Misclassification Prevention Act (EMPA) and, among other things, provides for employer record keeping, increased penalties against employers who misclassify, requires employers to notify their workers as to their classification, and protects workers who are retaliated against because they have sought to be properly classified.

At the state level, State Representatives Phillips and Driehaus introduced H.B. 523, which, if passed, would create a single seven-factor test to determine whether a worker is an independent contractor for purposes of unemployment compensation contributions, workers compensation premiums and state income taxes. At the present time, different agencies have different tests or definitions. Like the proposed federal legislation, there are provisions that prohibit employers from retaliating against workers. The proposed Ohio legislation even goes as far as to establish criminal penalties, as well as the right to sue and sanctions from the Department of Commerce.

We shall continue to monitor the proposed federal and state legislation. Regardless of the outcome of that legislation, it is important to understand the current law and to make certain that all of your workers are accurately classified.

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