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Governor Quinn Signs Amendments to Illinois Employee Classification Act

On July 23, 2013, Governor Pat Quinn signed into law two separate measures that amended portions of the Illinois Employee Classification Act. That law, which was first enacted in 2008, penalizes contractors who perform either public or private work in the construction industry that treat individuals or partners as “independent contractors” rather than as “employees” unless such persons qualify under the Act’s multi-pronged test for independent contractor status. Violations of the law can result in monetary penalties for each day a violation occurs, actual and punitive damages, costs and attorney’s fees for any resulting litigation, possible debarment from State contracts for repeat offenders, and potential criminal sanctions for wilful misconduct.

The first amendment (Public Act 98-0106) makes certain changes in the procedures for assessment of liability under the Act. These include notification of the employer within 120 days of the filing of a complaint against it; a requirement that the employer file an answer to the Department’s initial findings of a violation of the Act within 28 days or be deemed to have admitted the violation; and hearing procedures for employers to contest an alleged violation. More importantly, although the amendment reduces the monetary penalties for a first offense to \$1,000 per employee per day, and a second offense to \$2,000 per employee per day, the amendment also subjects any officer or agent of a corporation who “knowingly” permits the employer to violate the Act to personal liability for the same penalties and remedies as the employer.

The second amendment (Public Act 98-0105) implements a new – and likely burdensome – reporting requirement for contractors who perform construction

services in Illinois. As of January 31 of each year, all contractors must report to the Illinois Department of Labor the name, address and federal tax identification number for all individuals, sole proprietorships or partnerships who received payments from the contractor for the performance of construction services, as well as the total amount paid for construction services, and any material and equipment that was provided. A failure to file this report, or the filing of an incomplete report, will subject the contractor to the same penalties as any other violation of the Act, including possible debarment from State contracts. No such report needs to be filed concerning individuals or firms that comply with the State's responsible bidder requirements in the Illinois Procurement Code.

Should you have questions regarding these amendments or the requirements of the Illinois Employee Classification Act, please contact your Thompson Coburn attorney or any member of our Labor and Employment Group.

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