

EMPLOYMENT LAW ALERT

October 2011

Reminder!

The Changing Landscape of Social Media: How to Protect Your Workplace and Promote Your Business

An RMF "Best Practices" Roundtable Seminar

Wednesday October 26, 2011

8:00 - 10:00 a.m.

at the offices of Ruskin Moscou Faltischek, P.C.
RXR Plaza, Uniondale

RSVP to info@rmfpc.com or call 516-663-5353

Ruskin Moscou Faltischek's Employment Law Capabilities

- Sexual Harassment Prevention
- Discrimination Avoidance
- Restrictive Covenants (non-compete, non-solicitation) and Unfair Competition
- Protection of Trade Secrets, Proprietary Information and Business Opportunities
- Employment At Will, Breach of Contract and Termination for Cause
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

Confession May Be Good For The Soul, But Is It Good For Business?

By: Jeffrey M. Schlossberg



In September 2011, the IRS announced an amnesty program for employers entitled the "Voluntary Classification Settlement Program." The program is a way for employers who have misclassified employees as independent contractors to become compliant with IRS regulations. In order to be eligible for the program, an employer must "consistently have treated the workers in the past as nonemployees; have filed all required Forms 1099 for the workers for the previous three years" and not already be subject to an audit by the IRS, United States Department of Labor or any state agency.

The employer must agree to treat the previously misclassified workers as employees going forward and pay 10 percent of the employment tax liability that would have been due on the individual's compensation for the most recent tax year. Employers will pay no penalties or interest on the unpaid employment taxes.

For further information, please contact these Employment Law Group members:

Jeffrey M. Schlossberg
Chair
(516) 663-6554
jschlossberg@rmfpc.com

Douglas J. Good
(516) 663-6630
dgood@rmfpc.com

Joseph R. Harbeson
(516) 663-6545
jharbeson@rmfpc.com

Kimberly Malerba
(516) 663-6679
kmalerba@rmfpc.com

Previous Alerts

[September 2011](#)
[June 2011](#)
[May 2011](#)
[April 2011](#)
[March 2011](#)
[February 2011](#)

Follow us on 

From a financial point of view, this seems like a "home run."

But, as we have all learned, if something seems too good to be true, it usually is. While compliance under the VCSP will save on liability to the IRS, it is not binding on the U.S. Department of Labor, state departments of labor or private employees seeking benefits they should have received as employees. Moreover, participation in the amnesty plan requires acknowledgement that the company was paying the individuals improperly. This confession almost certainly would be used by the DOL or private parties against the employer to pursue other remedies. For example, if a company has misclassified employees and they worked over 40 hours per week, the company was obviously not paying overtime, which would now be recoverable (along with penalties and attorneys' fees).

If you are intrigued by the VCSP, we strongly recommend discussion with your legal and tax advisors before taking action.

On a Related Note...

The U.S. Department of Labor announced the signing of a memorandum of understanding with the Internal Revenue Service that will improve departmental efforts to end the business practice of misclassifying employees in order to avoid providing employment protections. The announcement set forth the DOL's intention of entering into agreements with various state labor agencies as well as New York State's attorney general.

According to the DOL, the joint undertaking "will enable the U.S. Department of Labor to share information and coordinate law enforcement with the IRS and participating states in order to level the playing field for law-abiding employers and ensure that employees receive the protections to which they are entitled under federal and state law."

Clearly, employers should not intentionally misclassify workers as independent contractors to save on payroll expenses. Considering the increased scrutiny being given to this area by various federal and state agencies it would be advisable for employers to consult with counsel to evaluate now whether their workers are properly or improperly classified and to discuss the appropriate remedies.

If we can be of assistance on these or any employment law issues, please do not hesitate to contact us.


RUSKIN MOSCOU FALTISCHEK P.C.

Smart Counsel. Straight Talk.

East Tower, 15th Floor
1425 RXR Plaza, Uniondale, NY 11556-1425
516.663.6600
www.rmfp.com



Attorney Advertising

Employment Law Alert is a publication for distribution without charge to our clients and friends. It is not intended to provide legal advice, which can be given only after consideration of the facts of a specific situation.