

Employment, Labor and Benefits Alert: New York Task Force Continues Aggressive Enforcement Against Employers Who Misclassify Their Workers

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On June 8, 2010, the New York Labor Commissioner announced the results of yet another successful enforcement sweep by the New York State Joint Enforcement Task Force on Employee Misclassification (the “Task Force”). The Task Force found that 12 of the 21 subcontractors on a construction site at the Rochester Institute of Technology had misclassified more than 200 workers as independent contractors rather than as employees.

The Task Force was created in September 2007 to address the growing problem of employers who inappropriately classify employees as independent contractors or pay workers off the books as part of the underground economy. Operating as a coordinated effort among the State Attorney General’s Office, Workers’ Compensation Board, Departments of Labor and Taxation, and the New York City’s Comptroller’s office, the Task Force conducts enforcement sweeps, coordinated investigations, referrals of audit results and data sharing, and aims to hold employers who engage in misclassification of employees financially and legally liable for their violations. Joint enforcement sweeps and other coordinated efforts usually occur after the Task Force receives a tip. However, the Task Force has also initiated “Main Street Sweeps” by sending its investigators door-to-door.

And so far the Task Force’s efforts have proved successful. Already in its third year of operation, the Task Force has uncovered more than 12,000 instances of employee misclassification and recovered almost \$400 million in unreported wages. Based on its most recent announcement, it shows no signs of slowing down.

The federal government has also undertaken to crackdown on worker misclassification. The IRS recently commenced an initiative to audit 6,000 companies over the next three years, including auditing the company’s worker classification efforts, and President Obama recently requested that Congress allocate \$25 million in its 2011 budget to bolster agency efforts to combat worker misclassification. Federal legislation has also been introduced.

As state and federal authorities intensify their efforts to crack down on worker misclassification, it is more important than ever for employers to take steps to ensure that they have classified their workers properly, including documenting their independent contract arrangements sufficiently, reviewing existing arrangements to determine whether classification as an independent contractor is appropriate, and monitoring independent contractor arrangements to ensure that the independent contractors maintain financial independence and sufficient control over their work performance to continue to justify classification as an independent contractor.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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