

CALIFORNIA GOVERNOR SIGNS S.B. 459, DRAMATICALLY INCREASING PENALTIES FOR MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS

By *Scott J. Wenner*

As was anticipated, California Governor Edmund G. (“Jerry”) Brown announced on October 9 that he signed Senate Bill 459. That legislation imposes dramatic penalties on employers found to have engaged in “willful misclassification” of workers as independent contractors, as well as on non-lawyer advisors who knowingly counsel to engage in such reclassification. For a detailed explanation of this important new law, a discussion of its probable impact, and some suggestions on coping with it, see our Alert dated September 28, 2011, which can be found [here](#).

S.B. 459 has been chaptered by California’s Secretary of State as Chapter 706, Statutes of 2011. It will appear as Sections 226.8 and 2753 of the California Labor Code.

Summarizing S.B. 459 briefly, the new law:

- Prohibits the willful misclassification of workers as independent contractors to avoid properly classifying them as employees.
- Prohibits charging misclassified workers any fees or making deductions from their compensation where those acts would have violated the law if the individuals had not been mischaracterized.
- Gives the Labor and Workforce Development Agency authority to assess penalties and take other action against violators, and requires it to report violators who are licensed contractors to the Contractors’ State License Board; further it requires the Contractors’ State License Board, once notified, to bring an action against the contractor.

- Subjects violators to civil penalties of \$5,000 to \$15,000 per violation, in addition to any other penalties or fines permitted by law.
- Subjects violators engaged in a pattern of violations to a civil penalty of \$10,000 to \$25,000 for each violation.
- Subjects non-lawyers who advise an employer to misclassify a worker to joint and several liability with the employer. ♦

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.

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