



Labor Department Increases Investigations into Worker Misclassification

Last week Secretary of Labor Hilda L. Solis reiterated the Department of Labor's (DOL's) commitment to increasing its Wage and Hour Division's investigation into employers' misclassification of workers as independent contractors. Because independent contractors are self-employed, they are not employees and not covered by various labor and tax withholding laws. Some employers classify workers as independent contractors in order to avoid taxes and the payment of overtime and benefits such as unemployment and workers compensation insurance. However, many companies unintentionally misclassify their workers. It appears that the Obama Administration is emphasizing the need for more investigations into misclassification so that more workers can receive unemployment insurance benefits in this time of record unemployment. More investigations will lead to more enforcement actions and, inevitably, the assessment of fines and penalties when misclassification is established. On Monday, February 1, Solis outlined President Obama's budget request for the DOL. The Administration is seeking \$25 million for a Misclassification Initiative with 100 additional enforcement personnel. States will also use the money for grants to boost their own investigation initiatives. On Wednesday, February 3, Secretary Solis testified before the U.S. House of Representatives, touting the accomplishments of the additional enforcement personnel who have been hired and advocating the need for more enforcement individuals. Different government agencies use different tests to determine whether a worker should be classified as an independent contractor or an employee. In many cases, it is a close call. We are available to assist employers in determining whether they are correctly classifying workers, and on taking actions to correct misclassifications or justify classifications. In light of the government's emphasis on its crack down in this area, preemptive steps are highly recommended.

Please contact Keith Gutstein at kgutstein@kdvglaw.com, or Ellen Storch at estorch@kdvglaw.com or by calling (516) 681-1100 to discuss how KDVG may assist you in understanding the implications of this important decision.

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