



Tidbits – November 2009

After attending a seminar on Maryland's New Workplace Fraud Act of 2009, here's our synopsis:

What is Workplace Fraud?

Workplace Fraud is the failure to properly classify an individual as an employee. The act of misclassification becomes workplace fraud when it is done with an intentional effort to lower payroll costs.

Why Workplace Fraud Matters?

A study conducted by the U.S. Department of Labor found that between 10 to 30 percent of audited employers in nine states misclassified their workers. In Maryland, data shows that approximately 20% of audited employers misclassify their employees as independent contractors. The State of MD loses millions of dollars in unpaid tax revenue, workers' compensation insurance premiums and unemployment insurance contributions each year because of misclassification.

Who is an employee and who is a subcontractor? The State of Maryland uses an "ABC" test to determine whether a worker is an employee or an independent contractor. The ABC test is a three-pronged test, under which an employer-employee relationship is presumed unless the individual performing the work is an exempt person or the employer demonstrates that:

- The individual is free from control and direction;
- The individual customarily is engaged in an independent business of the same nature; and
- The work is outside of the usual course of business of the employer or performed outside of any place of business of the employer [*Work is "outside the usual course of business" if the individual: 1) performs the work off the employer's premises; 2) performs work that is not integrated into the employer's operation; or 3) performs work unrelated to the employer's business.*]

The decisive test is whether the employer has the right to control and direct the employee in the performance of the work and in the manner in which the work is to be done.

What is the Workplace Fraud Act of 2009?

The information provided here is in summary form and does not reflect the IRS tax codes, applicable state tax codes, Federal Acquisition Regulations or any other regulatory codes in their entirety. If a particular situation may be applicable to you, please consult your CPA or tax advisor.



The Workplace Fraud Act of 2009 establishes:

1. Commonalities across state agencies (i.e. information sharing)
2. Adopts the 3-part test to identify legitimate independent contractors;
3. The presumption that a worker is a covered employee while in the service of an employer
4. Establishes a misclassification violation in Workers' Compensation Law and specifically prohibits misclassification of a worker by an employer for purposes of workers' compensation.
5. Penalties only apply to knowing violations
 - a. Adds a civil penalty not to exceed \$5,000 for "known misclassification" and penalties of up to \$20,000 for repeat offenders

Seminar was sponsored by the Joint Enforcement Task Force on Workplace Fraud