

IC MISCLASSIFICATION DYNAMICS IN CONTINGENT WORKFORCE MANAGEMENT

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ABSTRACT

The Contingent Workforce is categorized into temporary workers, SOW workers and independent contractors. Nearly 30% of the contingent workforces among the global organizations in the US are comprised of Independent Contractor’s (IC). However, the bill initiated by the Government of US in 2006 on the classification of IC has not been constitutionally passed thus resulting in companies taking advantage of IC’s. In order to prevent such a misclassification, the federal and state governments in the US have jointly launched a new IC classification program in order to ensure companies restructure their workforce management strategy; else pay huge penalties for such a misclassification.

The article focuses on the potential impact companies will face as a result of misclassifying their contingent workforce management.

Introduction

The Independent Contractor Workforce has grown by nearly 30% in the last few years. Major Fortune 500 companies from the IT, Healthcare, Travel industry in the US are including IC’s in their workforce to save on higher payment to the employees and avoiding paying taxes to the Government. However, since the last quarter of 2012, the Federal Government along with the State Governments has created a contingency plan to penalize companies who are misclassifying their IC workforce management. Companies such as FedEx, Wal-Mart and others have been asked to pay huge sums of penalties due to misclassification of IC workers. With the new bill on the verge of being constitutionally passed, it is important for the HR and Procurement division of global organizations to know the legal ramifications of this issue and how to restructure their contingent workforce management strategy.

What was the impact of such misclassification of IC workers?

Employees	Government
<ul style="list-style-type: none"> • Misclassified employees are often denied access to critical benefits and protections – such as family and medical leave, overtime, minimum wage and unemployment insurance – to which they are entitled. • This has resulted in organizations saving nearly 26% of their payroll costs illegally 	<ul style="list-style-type: none"> • The IC misclassification has resulted in the Government of US losing an estimated \$2.62 billion tax loss annually.

Impact on the Government that triggered the change in legislative action:

- The individual states in the US have lost between \$5 million and \$10 million annually on unemployment insurance because of IC misclassification.
- The loss to the unemployment insurance revenue in the US is estimated to be \$200 million annually if 1 percent of all workers were misclassified as ICs.

What is the new legislative action undertaken by the US Government?

- President Obama has committed \$14 million in 2013 for misclassification prevention, including \$10 million for grants to States to identify misclassification and recover unpaid taxes, and \$4 million for personnel at the Labor Department to investigate misclassification.
- The federal and the state Government have signed MOU’s with 14 states currently and look to do the same with other states by end of 2014.
- As a result, companies who have not classified their IC’s accordingly will face penalties under the individual state government itself.

Case studies of organizations that have been affected by such misclassification

- Multinational firms in Massachusetts have lost nearly \$ 10.9 million firms as a result of misclassification of IC’s.

Violations imposed on Organizations	Money Recovered due to Penalties
Restitution, penalties and fines for violation of the state’s independent contractor law	\$ 3.0 million
Overdue taxes collected primarily as a result of independent contractor misclassification	\$ 3.7 million
Compliance checks on firms applying for various licenses and certifications	\$ 2.4 million

- 19 organizations in Connecticut have been asked to stop work at construction sites because of employees misclassified as independent contractors:
 - Apart from stopping work, the organizations can also face a civil penalty of \$300 a day for every day organizations don’t carry workers’ compensation coverage.
 - Organizations affected by this stop work are: EJ Construction, Ironia Stucco, D&B Partners LLC, American Dismantling dba D&B Partners LLC, Avilik Inc., Flagg World, M&M Construction, Pillar Construction, TF Andrews, Brothers Contracting, Continental Tile, Kitchen Classics, Avani Stone, East Coast Installation, CT Construction, MCK Construction, ST Floor Covering, MJ Marchia and Deanes Inc.
 - Organizations have been hit with nearly 245 “stop work” orders and \$250,000 has been collected in civil penalties for misclassification.

- FedEx Ground Package System Inc. has been affected by a new lawsuit as they have violated the U.S. Racketeer Influenced Corrupt Organization Act in how it operates through independent contractor drivers.
- The 111-page complaint in the lawsuit includes numerous allegations, including a grievance about a requirement that independent contractor drivers acquire trucks from FedEx Ground.

Conclusion

Multinational companies working on an MSP model could now look to engage with ICES suppliers as well. Global staffing firms are now providing such ICES services along with the MSP services to ensure the companies' contingent workforce are efficiently managed. Majority of the medium sized companies could restructure their IC workforce management by implementing an IC diagnostics tool that ensures the workers are classified accordingly. Firms in the vulnerable section could however adopt the Voluntary Classification Settlement Program (VCSP) provided by the Internal Revenue Service (IRS), thus helping them to voluntarily reclassify their workers in exchange to 10% of the employment tax liability.

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