

PUBLICATION

Maryland Employers Will Face Tougher Sanctions for Misclassifying Workers as Independent Contractors [Ober|Kaler]

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The heightened focus on misclassification of workers as independent contractors should cause concern for employers. At least 30 states have partnered with the federal government to target worker misclassification, with Virginia as the most recent state to enter into an agreement with the U.S. Department of Labor ("DOL") to target misclassification. [Click here to read more about the DOL's misclassification initiative and to find out if your state has joined forces with the federal government.](#)

Maryland employers will soon face tougher penalties for worker misclassification. Effective October 1, 2016, the "Recovery of Benefits and Penalties for Fraud Act ("the Act") amends the Maryland Unemployment Insurance Law to provide for significant civil penalties for knowingly misclassifying workers as independent contractors.

Civil Penalties For Misclassification

If an employer fails to properly classify an individual as an employee, it will, of course, be required to make the necessary unemployment contribution payments to the State. The Act, however, also provides that the contributions will now be subject to an interest rate of two percent per month if the employer fails to pay the outstanding contributions within 45 days after the Maryland Department of Labor, Licensing and Regulation ("DLLR") issues an assessment to the employer.

Additionally, if an employer knowingly misclassifies workers, the employer will be subject to a civil penalty of up to \$5,000 per employee. For subsequent knowing violations, the DLLR may assess double penalties, that is, up to \$10,000 per employee who is misclassified. Additionally, the Act provides that any individual who knowingly advises an employer to violate the Act will be subject to a civil penalty of up to \$20,000. The Act defines "knowingly" as having "actual knowledge, deliberate ignorance, or reckless disregard for the truth."

Beware Joint State Agency Efforts Against Misclassification

Maryland employers will likely be liable for far more than the penalties provided for under the Act. When the DLLR finds that an employer has misclassified employees as independent contractors, the DLLR will "promptly" notify the Workers' Compensation Commission, the Insurance Administration, and the Comptroller. The DLLR's actions, of course, will cause those other agencies to collaboratively bring the employer into compliance with workers' compensation, insurance, and tax laws – a costly proposition for any employer.

Additionally, Maryland is one of those states that has entered in to an agreement with the DOL to target worker misclassification. Therefore, if the DLLR determines that an employer violated the Act, it is almost certain that the DLLR will notify the federal government of its findings, increasing the employers chances of being investigated by the DOL.

Regulations Forthcoming

Under the Act, the DLLR has been authorized to adopt regulations that will (1) require that the DLLR provide an employer with the factual basis for alleged violations; (2) establish procedures regarding the audit process and any agency level review available before appeal; and (3) provide guidance as to what constitutes the evidence relevant to determining whether an employer knowingly failed to classify an individual as an employee.

Misclassification of workers is about to become much more expensive for Maryland employers. In light of the Act, and the ever-increasing focus on worker misclassification, now is the time for employers to carefully consider whether they may be improperly classifying employees as independent contractors.