

## InterConnect FLASH! No. 25 – How Intense is Intense

### The InterConnect FLASH! Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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Recently it seems we are reporting to you of more and more states that are targeting worker misclassification, along with more stepped-up efforts on the part of those agencies already on board. This month, yet another state has joined the ranks, with news out of Virginia that they may be heading toward criminalizing worker misclassification. And there are new reports that the Department of Labor is even more zealous than in the past.

The Virginia General Assembly's Joint Legislative Audit and Review Commission recently conducted a study on the classification of workers as employees or independent contractors and has recommended that Virginia consider making worker misclassification illegal. Using an audit conducted by the Virginia Employment Commission which examined one percent of Virginia's employers, the study concluded that Virginia may have up to 40,000 employers who are misclassifying workers. Citing statistics that employers that misclassify workers are saving 40% in payroll costs, the study claims that such employers are getting an unfair advantage over employers who properly classify workers. Of course, the Virginia legislature's real motivation may be the estimated \$28 million in general fund revenue lost in 2010 because of workers being classified as independent contractors.

Those governmental agencies that have already set their sites squarely on worker misclassification continue to step up their aggressive tactics as well. Just imagine innocently arriving at your office one morning only to be greeted by G-men with audits on their minds. A recent report on Department of Labor practices issued by the Society for Human Resource Management finds that more and more DOL investigators are surprising employers by simply arriving at their doorstep for unannounced and immediate wage and hour investigations. Employers will not have the time to "get their ducks in a row" for an audit if these auditors appear without warning. This is why it is crucial that each company examine their independent contractor relationships and practices now, while there is still time to make any necessary tweaks to the programs to put themselves in the best possible position during any audit.

The DOL is also embracing technology and developing new tools and techniques, many of which are in their infancy and will no doubt expand and grow. This includes a strategy for taking advantage of smart phone technology by developing smart phone applications specifically targeted at worker misclassification. Stay tuned, as there will definitely be more to come on this.

Whether in the context of understanding the current worker misclassification initiatives and technologies or a complete review of your independent contractor programs, we at Benesch can

assist you in ensuring that your business is in tip-top shape, before an audit occurs. Please call if you have questions or if we can be of further assistance.

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