NEWSLETTERS

InterConnect FLASH! No. 30 – New Year, New Initiatives?

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

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A new year, a fresh start, right? Not necessarily. With the new year of 2013 comes word that the federal government is pursuing a new initiative centered around worker misclassification and the rights of independent contractors. Rather than a fresh start, it appears that we may simply have a new front on the old 2012 worker misclassification battles which are poised to become even more pronounced this new year.

The Department of Labor (DOL) is stepping up its pressure on worker misclassification using another tactic in 2013. On January 11, the DOL issued a proposal to collect information in a "Worker Classification Survey", the first such survey it has ever attempted. The survey will be collecting information on "employment experiences and workers' knowledge of basic employment laws" and will collect data from both workers and employers. Designed to shed light on whether or not workers know if they are employees or independent contractors and the consequences of such status, the survey itself has some interesting parameters. For instance, nearly 18,000 workers are scheduled to be interviewed for 5 minute blocks, with over 10,000 scheduled for extended 15 minute interviews. That is a fair number of workers to sample. Interestingly enough, for executives the DOL will conduct a disproportionately smaller series of interviews, consisting of 100 executive interviews in 15 minute blocks, with 20 executives scheduled for hour-long in-depth interviews.

When we take a closer look at the DOL's proposal, their background information gives further insight into what is likely their true objective with the study. As they explain it, because employers are not required to disclose employment status or pay determinations to workers under federal labor laws, workers do not understand the consequences associated with any misclassification. And, if the workers are misclassified, the employer sees cost reductions that give it a leg-up over other employers who properly classify their workers. For instance, the DOL estimates annual losses of $200 Million in unpaid unemployment insurance revenue and cites a GAO estimate of $2.7 Billion in unpaid income tax, Social Security and unemployment insurance, all due, they say, to worker misclassification.

Coupled with the worker misclassification information sharing and enforcement initiative that the DOL already has in place with the IRS and thirteen states so far (which we first told you about in our November 2011 Flash), this 2013 proposed initiative could be the start of another accelerated pushback against the independent contractor model. Currently, the DOL's Wage and Hour Division

is soliciting comments on its proposal to collect such information and conduct its survey, so those of you who wish to officially comment have until March 12 to do so.

Benesch will be monitoring this proposal closely and will be reporting back as the initiative develops. In the meantime, should you have questions on worker misclassification or wish to evaluate your own independent contractor program, please give us a call.

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