

InterConnect FLASH! No. 4 – Feds Fight “Misclassification”

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

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In previous issues of "the InterConnect Flash" we talked about the requirements for establishing a "legal" independent contractor relationship under IRS guidelines. The classification of employees or independent contractors is determined by reference to those guidelines. We also talked about proposed new legislation intended to control what the federal government calls "misclassifications" of employees as independent contractors. Legislation is not likely this year.

However, the Obama administration is not waiting for Congress to move on the misclassification issue. The government needs cash now to battle the budget deficit. The additional revenues from tax audits are viewed as low hanging fruit. President Obama's proposed federal budget for fiscal year 2011 includes \$25 million for 100 new enforcement officers and for grants to states to fund enforcement against motor carriers and others who try to take improper advantage of the IRS rules. This effort will be carried out by the IRS and the Department of Labor ("DOL"). States are able to assist because the federal funding is being provided.

The government is looking for big returns on its \$25 million investment. According to DOL estimates, the effort will raise \$7 billion over the next 10 years. We are advised by DOL that the new enforcement effort is not intended to eliminate the independent contractor business model that is utilized by many motor carriers. It is intended to reduce abuses. However, carriers are justly concerned that some of their standard operating procedures may look like violations to DOL. It is not always easy to tell the difference.

A 2000 study conducted by the Government Accountability Office found that at least 30% of companies who were audited misclassified at least some of their employees. In general, audits are ordered by the DOL following an investigation of alleged violations of federal labor laws, nonpayment of overtime or nonpayment of minimum wages.

Benesch will continue to monitor developments related to this issue. If you are concerned about a misclassification claim, we can develop employment policies to fit your business needs. Please contact us if you have any questions or if we can be of assistance.

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