



MEMO
NEW CALIFORNIA WORKER CLASSIFICATION LAW
(December 2011)

Earlier in October, California Governor Jerry Brown signed a new worker classification law imposing significant penalties on employers who misclassify employees.

Effective date – January 1, 2012

Key provisions –

1. It is unlawful to voluntarily and knowingly misclassify an individual as an independent contractor.
2. It is unlawful to charge the misclassified employee a fee or make any deductions from his/her compensation that would have otherwise violated the law had the employee not been misclassified. For example, an employer may not charge a misclassified employee for use of employer's supplies, tools, and equipment.
3. It imposes a civil penalty of between \$5,000 and \$15,000 for each violation of misclassification. Note that the penalties will increase to between \$10,000 and \$25,000 per violation if the employer is found to have engaged in a pattern of such violations.
4. In addition to penalties assessed, violators will be ordered to display a prominent notice of violation on their website for a period of one year to advise employees and the general public of such violations committed.
5. It further provides for joint and several liabilities for any person, other than an attorney or an employee, who knowingly advises an employer to misclassify an employee.

Enforcement –

1. The bill authorizes the Labor and Workforce Development Agency and the Labor Commissioner to issue a determination and assess permitted penalties against violating employers.
2. The bill also authorizes individuals to file a complaint with the Labor Commissioner to request a determination on possible worker classification violations concerning the individual filing the complaint.

Recommendations –

1. Obtain an understanding of the rules for worker classification.
2. Review past decisions regarding independent contractor status.
3. Develop a corporate policy on engagement and management of independent contractors.
4. Establish and execute a written independent contractor agreement for each contractor.
5. If independent contractor status is in question, obtain a written legal opinion from counsel.

If you have any questions regarding the new law or the recommendations discussed above, please do not hesitate to contact us. You may also view a copy of this and other FBD memos on our website under PUBLICATIONS/Client Memos - [http://www.fbco.com/publications.Client Memos](http://www.fbco.com/publications.Client%20Memos).

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