

HUMAN RESOURCES

Guide

An Advertising Supplement to the Orange County Business Journal • June 28, 2010



Summer Interns: To Pay or Not to Pay?

Summer Internships offer students opportunities to gain real world experience, develop contacts, identify areas of interest, and gain an edge in an increasingly competitive job market. Employers gain access to highly motivated and educated young workers, many of whom take internships just for the experience, with no expectations of receiving a paycheck. This is the perfect win/win solution, right?

Unpaid internships are becoming increasingly controversial even within higher education, where career-services professionals say students should be paid at least minimum wage. College credit is not considered compensation under the Fair Labor Standards Act (FLSA). This could leave an employer on legally shaky ground if the intern ever decided to sue for back pay. Additionally, the FLSA does not define "intern" nor does it provide an exemption from minimum wage or overtime for them. This doesn't necessarily mean that student interns must be compensated. The FLSA acknowledges that not all persons who perform some duties for an employer are "employees" and entitled to compensation in accordance with wage and hour laws. Most HR and legal practitioners, however, take the view that an intern, by definition, is a professional in training and employers using his/her services should adhere to the standards set forth under FLSA.

If you are struggling to decide whether or not to pay your interns, listed below are the requirements listed under the FLSA to determine whether the training you would provide meets the "learner/trainee" rules:

1. The training must be comparable to that given at a vocational school (For example, the intern could pay to receive the training somewhere else).

2. The training must benefit the student.

3. The student would not replace a regular employee.

4. The employer does not immediately benefit from the student's activities (this requirement is especially troublesome for employers because the company does expect to receive a benefit from the intern's labor).

5. There is no promise of a job following the training.

6. Both the employer and the student understand that no wages will be given for the training period.

The fact sheet from the Department of Labor regarding student interns can be found on the www.dol.gov website.

When deciding if an intern should be paid, the best rule of thumb is, "if there is any doubt, pay the student".

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A rendering of CHOC Children's new, state-of-the-art patient care tower as seen from the hospital's main entrance on Pepper Street.



Sandy Segerstrom Daniels, Honorary Campaign Chair, making her mark on the ceremonial beam at the May 20th Change CHOC, Change the World Public Launch Event.

CHOC Children's Launches Campaign to Make Orange County One of the Safest and Healthiest Places for Children

While many Orange County families may not see the national awards for excellence that CHOC Children's consistently earns, they experience firsthand the world-class pediatric care it provides. In order to sustain its performance as a premier children's hospital, while keeping with advances in medicine and with the region's growing needs, CHOC is taking bold action for transformative change.

Orange County has grown robustly since CHOC first opened its doors in 1964. With the growth of the region and an increased number of families turning to the county's only children's hospital, CHOC has developed into the hub of a regional pediatric healthcare system—one responsible for two million children.

Today, market demands and CHOC's mission to nurture, advance and protect the health of children are pushing this invaluable asset to grow and pulling it towards its destiny to become a sustainable, world-class pediatric institution that stretches the limits of what is possible for the life of a child and the hope of a family.

This is why CHOC has launched the *Change CHOC, Change the World* campaign, providing community members with the unique opportunity to shape the future of CHOC and, with it, the future of pediatric healthcare in Orange County. The comprehensive campaign is comprised of three initiatives: build a state-of-the-art facility; build a significant endowment; and build upon the affiliation CHOC has with UC Irvine and its school of medicine. To date, CHOC has raised over \$45 million towards the \$125 million campaign goal.

Changing More Than the Orange County Skyline

The keystone of the *Change CHOC, Change the World* campaign is the state-of-the-art, seven-story tower set to open on the Orange campus in Spring 2013. The new tower will offer the scope, breadth and depth of services required to help CHOC perform as a top, world-class children's hospital as well as allow for future growth. The tower will include new and advanced pediatric surgical suites, an emergency department, as well as radiology, pathology, imaging and laboratory services.

To promote a serene, healing environment, the tower will feature leading design and safety principles; private rooms; and enhanced family amenities. The tower symbolizes a new future for children's health care in Orange County.

CHOC is also working to build a significant endowment to support recruiting more of the world's top pediatric experts, while continuing to foster an environment of innovation and discovery.

All of the top children's hospitals became great by building endowments that fund talented doctors, and drive research and clinical breakthroughs. Such breakthroughs at CHOC will improve the lives of children locally, nationally and globally for generations to come.

The best pediatric facilities also have affiliations with leading universities and their medical schools.

That is why CHOC and UC Irvine, along with its school of medicine, formed an affiliation that integrates comprehensive clinical care with leading-edge research and world-class teaching programs. CHOC wants to build upon the affiliation to continue to recruit the best and brightest physicians, and transform the delivery of pediatric care in the region.

Stewarding Orange County to Greatness for Children

Change CHOC, Change the World represents a critical opportunity for community members to make a collective statement about what they want for Orange County's children.



Change CHOC, Change the World Campaign Leadership Committee gathered together at the Change CHOC, Change the World Public Launch Event on May 20, 2010: (From left to right) Michael Muhonen, M.D., CHOC Neuroscience Institute Director of Neurosurgery and Medical Director; Ron McMackin; Cindy McMackin; Sandy Segerstrom Daniels, Honorary Campaign Chair; Kimberly C. Cripe, CHOC Children's President and Chief Executive Officer; Ali Kavianian, M.D., CHOC Children's Surgeon-in-Chief; Heather Madden; Chris Furman. Committee members not in photograph: Jeff Elghanayan.

The evolution of CHOC is a defining, foundational element of the county's culture that says, "We believe it's critical for Orange County to be one of the medically safest and healthiest places for children in the nation." With the campaign, CHOC is taking the monumental and critical steps to make this a reality.

And, CHOC has community and business leaders who have already come together to support its transformative journey. Sandy Segerstrom Daniels, Honorary Chair of the *Change CHOC, Change the World* campaign, is leading a committee to create awareness that there is nothing more important than the health and safety of children.

Daniels' life and her career as a leading business professional represent her passionate advocacy for children. She is in her 10th year of working with the CHOC Follies, helping to raise millions of dollars for CHOC. And two years ago, she worked with members of the Senate and Congress to establish September as National Child Awareness Month, making organizations that serve youth a national priority.

The advocacy Daniels has for Orange County is rooted in her family's history of fostering and giving back to the region's business and arts.

The Segerstrom family has turned its land holdings into one of the most successful shopping, commercial and cultural centers in the nation, founding South Coast Plaza and the Performing Arts Center. And, with the *Change CHOC, Change the World* campaign, CHOC will continue to be another major asset for the community of Orange County – now and in the years ahead.

Daniels explains, "We have been very involved in bringing the arts to the next level in Orange County. In the same way, the fundamental system for keeping our children healthy needs to evolve as well. We're working to help CHOC build the facilities and attract the doctors required to take its rightful place among our nation's top children's hospitals."

Joining Daniels in standing firmly behind CHOC's vision is a committee of community and business leaders: Kim Cripe, President and CEO, CHOC Children's; Jeff Elghanayan, CHOC Children's Foundation Board member; Chris Furman, CHOC Children's Foundation Board Chair; Ali Kavianian, M.D., Surgeon-in-Chief, CHOC Children's; Heather Madden, CHOC Children's Foundation Board member; Cindy McMackin, Pan-Pacific Plumbing; Ron McMackin, Pan-Pacific Plumbing; and Michael Muhonen, M.D., Medical Director, CHOC Children's Neuroscience Institute.

In addition to the support of the leadership committee, the *Change CHOC, Change the World* campaign has received the generous support of businesses and individuals who have already committed to the campaign through a donation of \$1 million or more. They include:

- Argyros Foundation
- CHOC Pediatric Subspecialty Faculty
- Costco Wholesale Corp.
- Glass Slipper Guild
- Hoag Memorial Hospital Presbyterian
- Jack and Jill Guild
- Lars Holmquist
- Music for a Cure, Inc.
- Robert M. and Diana Leaverton Family
- Kathryn T. McCarty

To learn more about CHOC and the *Change CHOC, Change the World* campaign, visit www.choc.org/changetheworld/.

Five Star Dental Practice Opens Second Location at Irvine Spectrum

Cornerstone Dentistry, a nationally recognized dental practice, has opened its second location at 153621 Alton Parkway, in Irvine. "We have a perfect practice model for those individuals who are seeking a high level of service and one to one attention when they visit a dentist," says Allen Nazeri DDS, the founder. He adds: "Our practices are not about the quantity of patients seen in a given day but the quality of care and attention to details."

Both Cornerstone Dentistry's locations (Palm Desert and Irvine) resemble a high-end hotel and offer a dental staff comprised of individuals that are highly experienced and trained. Both locations offer advanced general dentistry, cosmetic and implant dentistry. The practices are both licensed and trained to fit athletes—including golfers—with the popular Pure Power Mouth guards™ to improve strength and balance.

"We have invested a substantial amount of capital in digital technology, including our 3 D cone beam which allows us to show our patients exactly what is going on with their bones and teeth," says Sandy Olson, director of patient services at Cornerstone.

Cornerstone's company mission, practiced on daily basis, is to exceed patients' expectations by providing individualized, high quality, comprehensive dental care in a non-traditional setting. Floral arrangements, antiques, art, fine furniture and calming scents are all part of the Cornerstone experience. Staff care and patient pampering is the rule, not the exception. After long and complex dental procedures, patients may receive a nutritious meal at home. When needed, transportation will be provided.

Appointments can be made by calling 949-789-0303 and by visiting online at www.cornerstonedentistry.com.



Five Star Palm Desert practice now open in Irvine

Webster University in Irvine Offers an Innovative Dual Major In Human Resources and Management Leadership

Our name has represented quality, integrity, affordability and professional education for more than 30 years in Irvine, California. Located in a brand new facility in the heart of the Irvine Spectrum area, Webster University, offers innovative business degree and counseling degree programs that expressly meet the needs of busy professionals. The University is pleased to announce that HR professionals have a unique opportunity to complete a "dual major" Master of Arts degree in both Human Resources and Management & Leadership. The dual major requires the completion of eight Human Resources and six Management courses. Consider this wonderful opportunity to complete a dual major by completing this 42 semester credit program!

You will enjoy the best education at the best price. Webster University is ranked in the top tier of "America's Best Colleges" by *U.S. News & World Report* (2010 Edition) and is listed in *The Orange County Business Journal* (MBA edition, 2009) as one of the most affordable degree programs in Southern California—the 36 semester credit, MBA degree program costs about \$20,000 based on the 2009-2010 tuition rate, and, there are no ancillary university fees.

Webster University, a private, nonprofit university was founded in 1915 and has been continuously accredited since 1925. In 2008, the University's regional accreditation was reaffirmed with commendations for 10 years, the maximum time awarded. Additionally, ALL business degree programs are accredited by Association of Collegiate Business Schools and Programs (ACBSP). The ACBSP accreditation team named Webster "Best in Class for outcomes assessment." The latter confirms our commitment to academic quality and student learning. The University is also a member of Delta Mu Delta international honor society in business administration.

We offer several degree program options (see our current ad), including the Bachelor's (BA) degree completion programs in Management and the Master of Business Administration (MBA) degree. All undergraduate and graduate courses are offered weekday evenings (from 6pm-10pm) and Saturday mornings (8am-Noon) in an accelerated nine-week format, allowing degree completion at an accelerated pace. New terms begin in January, March, May, August and October—so you can begin your Webster degree at a convenient time.

Earning your Webster University graduate degree can be just a "click" away. Presently, 11 graduate degree programs (e.g., MBA, MA-Management, MA-Human Resources, MA-Teaching, MA-Public Relations) and four certificate programs (e.g., government contracting, decision support systems, webs services) are completely online coursework programs for the busy traveler. You can complete your degree program completely online or in-class or combine the two options for most Webster degree programs.

Call Webster University at 949.450.9066 for a personalized consultation or visit our website: www.webster.edu/irvine. We are conveniently located just off the I-5 or I-405 freeway, near the Irvine Spectrum at 32 Discovery, Suite 250 in Irvine, CA 92618.



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Improving Productivity and Quality With a Temp Workforce

Have you ever regretted hiring someone? Perhaps they presented themselves well in the interview, but once they started, the headaches began? As many of us know, hiring wrong can have huge financial consequences, especially if you're in manufacturing. Though your business requires a high volume of workers to get you through peak periods, you're also trying to mitigate risk and increase bottom-line profits.

It may require some work up front, but protecting the production line by hiring right is a strategy that is achieving profitable results in the manufacturing and distribution sectors. Workers that feel entitled to more than they have earned will often bring dysfunction into the workplace. These individuals will sometimes look to personally benefit through theft, cheating on timesheets, filing fraudulent workman's comp claims, or even bogus employment lawsuits. Their predatory behaviors not only create an uncomfortable work environment for others, but also pose a serious threat to company profits.

Screening out workplace predators is what Alar Staffing is accomplishing every week, as over 1,200 job applicants come to their Santa Ana and Sante Fe Springs offices looking for employment in light industrial and manufacturing plants in Orange County, Inland Empire, and South Los Angeles. They currently employ an uncomplicated yet focused business model that results in increased productivity and improved quality of work.

"Our business model is simple," Pati Cinkle, President of Alar Staffing comments. "We put our client's interest first, then make sure we do the right thing for our employees, and by partnering only with those that share our values, the rest falls easily into place." This philosophy has earned strong loyalty from their clients and has been a major contributor to Alar Staffing's organic growth through referrals.

The downturn in the economy has created an opportunity for many manufacturing and distribution companies to review how they are currently staffing and the criteria for selecting an agency.

Though changing providers might not be feasible, ensuring that the five following areas are being addressed can ensure that peak season is uninterrupted by issues that could have been prevented.

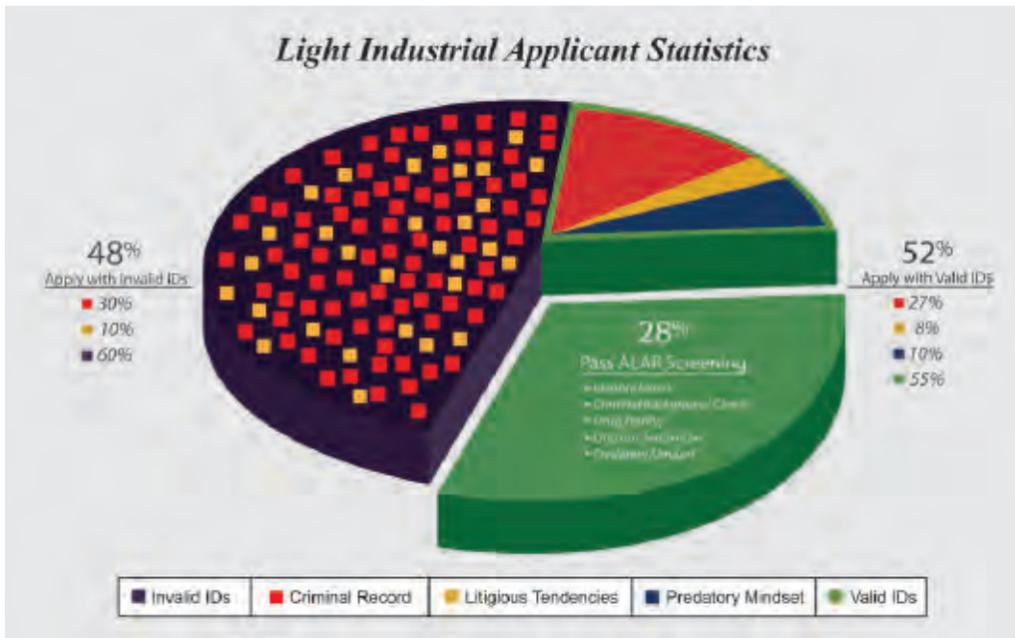
Thorough Screening

Approximately 48% of entry-level, light industrial applicants are applying with forged, borrowed, or stolen documents, which makes their true identity unknown and screening out criminal backgrounds or fraudulent litigation history nearly impossible (see inset chart). By educating your HR team on spotting fake documents, you'll protect yourself from future risk and make sure you know who's working with your product.

Take the time to conduct in-depth interviews that include behavioral assessments to screen for predatory tendencies and those who would bring dysfunction to the workplace. And because there is no correlation between placing more people in production and increasing productivity, be sure that you hire the right person through specific skill set testing. It's important that temporary workers be held to the same hiring standards as your direct employees.

Just-In-Time Fulfillment

Having a back-up staffing agency may be a good strategy to make sure you can get all



the workers needed throughout your production cycles. Pick an agency that has high traffic so you get the best workers possible in the shortest amount of time. If you are consistently having problems with workers not showing up for work, it could be that the agency is not spending enough time qualifying whether the job is truly in the applicant's best interest. Often, with a light industrial workforce, employees have a difficult time finding reliable transportation. In this case, you may benefit from using an agency that provides transportation for its workers.

Safety Program

Though this may seem obvious, companies run into problems when safety programs are not properly implemented. A sound safety program has many components, including a safety committee to strategize and implement the goals of the safety program. These committees engage supervisors and other employees on developing comprehensive and effective safety systems. Because people tend to support that which they've helped create, promoting employee participation is key. Also, having managers and trainers that are OSHA certified can help provide guidance with general practices.

Employee Retention

If through familiarity comes speed and efficiency, then building programs that appreciate and value employees will improve productivity and reduce training costs. Employees stay when they feel good about themselves, those they work with, and the company they work for.

Cultivating a work environment where employees feel acknowledged and appreciated is the key to employee retention.

This might be as easy as hosting a lunch time BBQ or rewarding best performers among their peers and publically acknowledging excellent behavior. Letting employees know you value their contributions is an excellent practice.

Onsite Management

If you are large enough to have the full-time presence of an agency representative in your facility, you understand how critical this relationship is. Their role is vital in daily management of the temporary workforce. By being active in all disciplinary actions, terminations, injuries, workplace investigations, etc. they minimize co-employment liability. They also play a central role in creating a positive work environment, which can help increase morale. If you have a concern with quality control, ask your onsite manager to create training manuals that will address these issues.

How Do You Rate?

By reviewing these 5 areas within your temp workforce, perhaps you can identify weak points that can be modified to reduce risk, increase productivity, and protect company profits. Smart managers are taking time to evaluate their systems and operations and seeing marked improvement in their workplace.

If you'd like to learn how Alar Staffing is implementing great ideas like these, be sure to visit their website at www.alarstaffing.com. Their free online Risk Assessment Tool can help you predict with accuracy whether your company might be at risk for dysfunction. Holding to their values of integrity, service, passion, excellence, and discipline, they have earned the confidence of those that they serve. In this sense, Alar Staffing has become more than just a staffing agency, but a partner in productivity.

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DON'T BE A WAGE & HOUR VICTIM: BEST PRACTICES TO KEEP YOUR COMPANY OUT OF LEGAL TROUBLE

Wage and hour claims, including class action lawsuits, continue to represent a major portion of employment-related litigation in California. Because wage and hour compliance can be a minefield for the unsuspecting employer, companies must be proactive in managing their exposure to these costly claims. Identified below are six key risk areas, common employer mistakes and recommended best practices.

1. Misclassifying Employees As Independent Contractors

An employer's misclassification of an employee as an independent contractor creates significant exposure to wage and hour claims (e.g., minimum wage, overtime, meal/rest periods, business expense reimbursement) and federal and state tax penalties. As state and federal governments struggle with soaring deficits, misclassification audits are gaining momentum as an untapped source of revenue. President Obama's 2010 budget assumes that the federal crackdown on independent contractor misclassifications will yield \$7 billion in revenue over the next 10 years.

Companies should act now in assessing the propriety of any workers classified as independent contractors, including reviewing the California Employment Development Department's Employment Determination Guide (www.edd.ca.gov).

2. Unpaid Overtime On Non-Discretionary Bonuses/Commissions

In many cases, employers are required to include non-discretionary bonuses and commissions in calculating a non-exempt employee's regular hourly rate for purposes of paying overtime. A bonus will be considered discretionary and, therefore, not part of the regular rate of pay if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the earning period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payment regularly.

Any employer that pays bonuses and/or commissions to non-exempt employees should review its payroll processes to ensure the proper calculation of overtime.

3. Off-the-Clock Time

An employer is obligated to pay for all hours that it knew, or should have known, were worked by the employee. This includes pre- and post-shift work such as putting on protective clothing, walking to a work station, or working during computer boot-up time. In today's 24/7 world of virtual network access, employers must exercise caution in allowing non-exempt employees remote access to company e-mail and servers and in providing BlackBerry-type devices. Such around-the-clock access significantly increases the risk of an off-the-clock claim. Where such access is given, employers should have a user agreement which covers, among other things, the employee's obligation to accurately record all hours worked remotely. Managers should also be

trained regarding the importance of ensuring that non-exempt employees are recording all time spent working, including work performed after hours via remote access.

4. Meal/Rest Periods

California Labor Code section 226.7 is responsible for much of the explosion of wage and hour litigation. This provision, which became effective in October 2000, gave employees the right to one additional hour of pay for each day that an employer failed to comply with California's strict meal and rest period requirements. Among the mistakes employers make are: automatic 30-minute meal period deductions; providing less than 30 uninterrupted minutes; on-duty meal periods; requiring employees to stay on premises during a meal period; and failing to provide employees with the opportunity to take a duty-free rest period.

The California Supreme Court is reviewing these issues in the *Brinker* and *Brinkley* cases. Pending those decisions, meal and rest period claims continue to be a major source of litigation. To minimize exposure to these claims, employers should: (i) ensure that the applicable Wage Order is posted; (ii) implement detailed written meal/rest period policies that are distributed to employees; (iii) conduct periodic meal/rest period training of employees and management; and (iv) audit employee timecards for meal period compliance.

5. Employee Misclassification

Employees are presumed to be non-exempt and eligible for overtime; it is the employer's affirmative burden to prove otherwise. Often the main issue in misclassification litigation is whether the employee spends more than 50% of the time performing exempt duties. This is a quantitative and qualitative analysis; job titles are not determinative.

To reduce exposure to these claims, employers should maintain detailed and accurate job descriptions that closely track the exemption requirements. In addition, employers should conduct periodic audits to confirm that exempt employees are indeed spending more than half of their time performing exempt work.

6. Failure To Reimburse For Business Expenses

All employees (exempt and non-exempt) are entitled to reimbursement for expenses or losses incurred within the course and scope of employment (e.g., mileage, cell phone, uniforms, tools, etc.). An employee cannot be required to pay for cash shortages or breakages, even if they are the result of the employee's negligence; discipline is the employer's recourse. Employers that issue a lump sum payment to cover business expenses (e.g., auto allowance) should conduct periodic audits to ensure that the employee's actual expenses are being fully covered.

Act Now

In light of the continued scrutiny of wage and hour compliance, it is critical that employers take action now and audit their payroll practices to anticipate and eliminate what, in many cases, can be significant monetary exposure.

It is critical that employers take action now and audit their payroll practices to anticipate and eliminate what can be significant monetary exposure.



Maria Z. Stearns is a Senior Counsel in the Orange County office of Allen Matkins Leck Gamble Mallory & Natisis LLP where she practices in the firm's labor and employment practice group. She can be reached at 949.851.5472 or mstearns@allenmatkins.com.



Maria Stearns was recognized as a Rising Star by Southern California Super Lawyers magazine in 2010.



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—Jan Piper, 2005 Graduate

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The Full Court Press on Employee Misclassification

by Javier H. van Oordt, Principal at Callahan and Blaine

On April 22, 2010, U.S. Secretary of Labor Hilda L. Solis made the following statement on the introduction of legislation regarding employee misclassification:

I applaud Sen. Brown and Rep. Woolsey for their efforts to address this significant and troubling issue. One of my goals as secretary of labor is to secure minimum and overtime wages and to help middle class families remain in the middle class. Working on the issue of *misclassification* is key to attaining those goals because *misclassification* of employees as independent contractors deprives employees of critical workplace protections and employment benefits to which they are legally entitled. I look forward to working with the Congress to address the important issue of *misclassification* of workers.

The Department of Labor is working with the Vice President's Middle Class Task Force and the Department of Treasury on a multi-agency initiative to develop strategies to address this issue. The administration's budget request for fiscal year 2011 includes \$25 million for the Department of Labor as part of this initiative, including \$12 million for increased enforcement of wage and overtime laws in cases where employees have been *misclassified*. The Wage and Hour Division is currently considering how to best target its FY 2011 enforcement efforts and is emphasizing *misclassification* in its ongoing FY 2010 enforcement strategy. The department is also exploring all possible options for addressing this problem, including ways to provide better guidance to both workers and employers, and to increase information sharing between Department of Labor agencies and the states that are also working on this issue.

President Obama's proposed federal budget for the 2011 fiscal year includes \$25 million specifically designated for a Misclassification Initiative intended to target employers who misclassify workers. Under this new budget, the DOL plans to hire more than 100 enforcement staff and will introduce competitive grants to boost individual states' incentives to deal with employee misclassification.

Further, the IRS is launching its National Research Project (NRP) requiring the audit of 6,000 employers over the next three years. The goal of the NRP is to examine and compile employment trending information related to misclassification. The Project will require comprehensive audits and will address the employment tax gap estimated at \$15 billion due to misclassification.

These initiatives are being pursued because federal and state studies have concluded that employers illegally passed off millions of regular workers as contractors. The cost to the federal and state governments is estimated to be in the billions of dollars in lost tax revenues. Federal and state officials, many facing record budget deficits,

are starting to aggressively pursue companies that try to pass off regular employees as independent contractors.

California has already taken the lead in addressing this issue. California's attorney general and potential governor Jerry Brown, is currently seeking \$4.3 million from a construction company that he accused of misclassifying employees. In 2009, he won a \$13 million judgment after a court ruled that two companies had misclassified hundreds of janitors, not paid minimum wage and overtime pay, and deprived the state of its portion of the companies' payroll taxes.

Similarly, the Illinois Department of Labor recently imposed over \$300,000 in penalties on a home-improvement firm for misclassifying its workers. Several other states have commissioned studies on worker misclassification, audited employers, passed legislation narrowing both the definition of independent contractor and creating a rebuttable presumption in favor of an employer-employee relationship, and passed workplace fraud statutes creating new sanctions for employers who knowingly misclassify workers. While employers deny misclassifying workers deliberately, the lines are often unclear between employee and independent contractor status.

Combined, the work of the DOL, IRS, and state agencies represents a joint effort to eliminate incentives for employers who misclassify their workers, penalize those employers who do, and replenish state and federal coffers in the process.

Because of the increased scrutiny by these agencies, companies need to review their worker classifications immediately. With the impending DOL Misclassification Initiative and IRS NRP project, as well as California's aggressive approach to this problem, companies need to review their independent-contractor relationships. Companies should review the reasons for wanting to use independent-contractor classifications. These classifications must be viewed in light of all the applicable federal, state-agency and common-law tests. Audits should be undertaken that include a factual and legal analysis of any risks and potential financial exposure.

Once a company confirms the independent-contractor status of its workers, it must take steps to protect itself. It should require all independent contractors to enter into written agreements, preferably drafted by a knowledgeable labor-and-employment attorney, in order to comply with the various independent-contractor tests. Companies should not take lightly the repercussions of incorrectly classifying its workers, especially due to the difficulty in applying the different and evolving standards to individuals performing services for them. The full court press on employment misclassification has only just begun and likely will continue into the foreseeable future.

About the Author

Javier H. van Oordt is a principal at Callahan and Blaine who counsels and represents diverse clients in complex and high value business litigation. He has significant trial and arbitration experience in contract, business fraud, employment, products liability, property, class action and personal injury litigation. He successfully managed international discovery efforts in business litigation involving large multi-national defendants and has taken depositions throughout the world. He is also the firm's delegate to the International Law Firms (ILF), an international association of independent law firms throughout the world.

Mr. van Oordt has significant experience in wage and hour class action cases. He played a key role in recent litigation involving a 5,000 member class with claims exceeding \$100,000,000. That litigation's seminal issue was the determination of "independent contractor" v. "employee" status of the defendant's workers.

Mr. van Oordt has also appeared and successfully argued cases before the California Court of Appeals, Second District. He has published articles on international business litigation and spoken on the subject. He has also published articles in the Los Angeles Daily Journal and Employment Practices Liability Consultant on employment issues, as well as speaking on these topics. He is admitted to practice in all state courts in California and in the United States District Court, Central and Northern Districts of California.



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