

## Service

## Labor &amp; Employment

## Missouri Department of Labor and Industrial Relations to Focus on Misclassified Workers

As the result of a recent audit by the Missouri State Auditor, the Missouri Department of Labor and Industrial Relations (MODLIR) is adopting recommended steps to ensure that employees in Missouri are properly classified. Initially, these changes will focus on employers in industries with the highest instances of misclassification and will more effectively utilize data available from federal IRS form 1099. The MODLIR has further committed to conduct follow-up audits on employers with significant noncompliance issues.

Misclassification of employees as independent contractors has been the focus of enhanced enforcement by the U.S. Department of Labor and state departments of labor and employment security. This enhanced enforcement has been spurred in large part by declining state income tax revenues caused by the economic downturn and the increase in demand for unemployment compensation benefits generated by the loss of jobs.

As part of its five-year strategic plan for fiscal years 2011-2016, the U.S. Department of Labor has identified several targets for misclassification investigation.

"A number of recent studies conducted by worker protection organizations, researchers on behalf of state governments, and DOL's Employment and Training Administration suggest that misclassification – while occurring in many industries – is more prevalent in several high-risk industries: construction; janitorial; home health care; child care; transportation and warehousing; meat and poultry processing; and other professional and personnel service industries. The construction industry, in particular, is cited in each of the studies as rife with employee misclassification. As indicated above, WHD [Wage and Hour Division]

will raise its directed investigation level and increase its presence in these key industries and will target employers who are identified as having misclassified employees or groups of employees."

The Missouri Auditor's report found that the MODLIR "ranks 50th of 51 state labor agencies (including the District of Columbia) in the nation in misclassified worker audit effectiveness, according to U.S. Department of Labor data from calendar years 2005-2009." The audit report estimated that if MODLIR audit effectiveness could rise to just the national average, taxable wages reported in Missouri would increase \$38 million annually, with increased funding for the Missouri Unemployment Compensation Trust Fund, the Workers' Compensation Fund and the Second Injury Fund.

### **What This Means To You**

U.S. Department of Labor and MODLIR will be undertaking more rigorous examination of those employers utilizing the services of independent contractors, particularly in the targeted industries. We have already seen unemployment compensation audits increasing throughout the United States, especially in those areas most severely impacted by the economic downturn. Missouri employers should closely examine whether classification of workers as independent contractors can be supported under federal and state laws. The cost of misclassification in terms of back taxes, penalties and fines is significant.

### **Contact Info**

Should you have any questions about employee misclassification, please contact your Husch Blackwell attorney.

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