Increased Government Scrutiny of Employee Misclassification

September 30, 2011

The Department of Labor (DOL), Internal Revenue Service (IRS)?Ã¡and seven states (Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Utah, and Washington) have entered into agreements coordinating their efforts to end the practice of misclassifying employees as independent contractors.?Ã¡ Hawaii, Illinois, Montana, and New Yorkare soon to follow. Under these agreements, the DOL will be able to share information regarding misclassified workers with the IRS and participating states, which could lead to more audits by the agencies and states involved ?Ã¡ The DOL News Release about these agreements is available here. In addition, the IRS announced a new program, entitled the "Voluntary Classification Settlement Program" (VCSP), which permits employers to voluntarily reclassify independent contractors as employees for federal employment tax purposes on a prospective basis.?Ã¡ If an employer?Ã¡participates in the VCSP, the employer will only have to pay 10% of the resulting employment taxes that are due for the most recent tax year, but will avoid all penalties and interest that would otherwise be due for such misclassification.?Ã¡ The IRS Announcement of this new program is available here. With this increased scrutiny, employers should review the factors used by the IRS, DOL and states to determine employee status and ensure that all workers are properly classified.