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## MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS

Misclassifying workers as 1099 independent contractors instead of W-2 employees can be a costly mistake. So it pays to conduct periodic audits to evaluate and reduce your potential exposure to penalties, fees, and expenses. As state and federal governments continue to seek new revenue sources, businesses should plan for the possibility of a **Department of Labor (DOL)** or **Internal Revenue Service (IRS)** audit to determine compliance with those agencies' respective classification tests.

Many employers are guilty of misclassifying workers, whether intentionally or through ignorance of the law. The perceived benefits of classifying a worker as an independent contractor as opposed to a W-2 employee are real. These include savings on overtime wages, employment taxes, and workers' compensation premiums. Independent contractors are not entitled to receive employee benefits such as paid leave, insurance, etc. They are also not able to assert claims under many federal employment laws, such as the **Family and Medical Leave Act, Title VII (employment discrimination)**, and the **Americans with Disabilities Act**. Companies are generally not required to verify their immigration status to work in the United States when engaging independent contractors.

However, the risk of misclassifying workers is equally real. Companies misclassifying workers as independent contractors risk being penalized or fined by the Department of Labor and/or the IRS. Additionally, companies risk collective or class action litigation filed by workers for unpaid wages and benefits. Defending and resolving these matters can be costly to a company's bottom line.

### How JAH Can Help

The **JAH Employment Practices Group** can help you with the audit, provide opinions on current classifications, and provide education and training to managers and human resources professionals. JAH can also assist in reviewing and revising job descriptions to support the appropriate classifications, identifying areas of potential exposure and liability, and providing advice on tax withholding obligations. Better job descriptions have the added benefit of clarifying each workers' duties and responsibilities and can be invaluable when considering disability accommodations requests. We recommend that all such audits be conducted with the oversight of legal counsel.

JAH encourages our clients to conduct annual or bi-annual reviews to confirm that workers are properly classified. Let us help you do these right.

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