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LABOR & EMPLOYMENT LAW E-BRIEF

Any Employees Misclassified as Independent Contractors? Now is the Time to Act!

On September 19, 2011, U.S. Secretary of Labor, Hilda Solis signed a memorandum of understanding with the Internal Revenue Service. The memorandum allows the U.S. Department of Labor and IRS to share information and coordinate law enforcement in an effort to end the misclassification of employees as independent contractors. During the signing ceremony Solis stated, "We're here today to sign a series of agreements that together send a coordinated message: We're standing united to end the practice of misclassifying employees."

Two days later, on September 21, 2011, the IRS launched the Voluntary Classification Settlement Program (VCSP). The VCSP provides an opportunity for eligible employers to reclassify workers that are erroneously classified as independent contractors or nonemployees, as employees for employment tax purposes. Under the program, eligible employers can obtain substantial relief from past federal payroll taxes owed if they treat workers as employees on a prospective basis. To participate in this program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.

About E-Brief

E-Brief is a periodic email newsletter that is sent to our clients and friends to provide information that is important to their success.

Comments Welcome

We welcome your comments on our E-Brief. If there are topics you are interested in learning more about, please email us at: e-brief@woodsaitken.com

About Woods & Aitken LLP

Woods & Aitken has been representing clients since the firm was founded in 1921. For more information about the firm and our attorneys, please visit our website:

www.woodsaitken.com.

To be eligible for the VCSP, an employer must: (1) consistently treat the workers as nonemployees; (2) file all required Forms 1099 for the workers for the previous three years; and (3) not currently be under audit by the IRS, U.S. Department of Labor, or a state agency concerning the classification of the workers.

The key here, like most employment-related issues, is proactive analysis. Don't get caught by surprise, well after the facts have been set to establish liability. If your Company is mislabeling employees as independent contractors, now is the time to afford employee status, and further evaluate applying for the VCSP.

Additionally, [Woods & Aitken's Labor & Employment Group](#) is holding a complimentary webinar on this topic. Attorneys' [Pam Bourne](#) and [Andy Koszewski](#) will explain the VCSP and the factors that the IRS uses to distinguish employees from independent contractors.

[CLICK HERE to register for the upcoming webinar](#)

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