

# Legal Minute

## INDEPENDENT CONTRACTORS V. EMPLOYEES

### Worker Misclassification Just Got Riskier...

Worker misclassification is common. Over the past three years, throughout several investigations, the Department of Workforce Development found that 5,841 workers were misclassified and gross wages of almost \$70 million were not reported.

This spring, Governor Tony Evers announced the creation of the Joint Enforcement Task Force on Worker Misclassification. This Task Force will target businesses that are treating individuals as independent contractors who should properly be classified as employees. The Task Force presents additional risk that a business will face penalties and other financial consequences for misclassifying individuals as independent contractors.

But how does an employer properly classify a worker as an employee or an independent contractor? The answer is complex, as each law has a different test to evaluate whether an individual should be classified as an employee. Therefore, employers must look at the tests under: Unemployment Insurance, Worker's Compensation, Wisconsin wage and hour laws, Federal Fair Labor Standards Act, Wisconsin Fair Employment Act, Federal Title VII, OSHA, and IRS. Each law has a test an employer applies to the worker to determine the correct classification.

With the chances of misclassification enforcement against your company now more likely, we highly recommend that you confer with your counsel regarding any individual that you classify as an independent contractor. Your counsel can advise you regarding any changes that need to be made before any penalties are incurred and how to communicate and implement those changes with your personnel.

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