

## **Gambling on the Employee/Independent Contractor Issue?**

By Jewell Lim Esposito on October 25, 2011



Welcome to the Worker Classification Casino!

First, the IRS is scrutinizing the employ/independent contractor issue -- and offering a very nice settlement program to encourage companies to prospectively classify as "employees" workers who they improperly classified as "independent contractor." See our [earlier blog piece](#) about the IRS's new program at [2011 Voluntary Amnesty Employee Classification.pdf](#).

Second, the Department of Labor and 11 state governments (Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Missouri, Montana, New York, Utah and Washington) are *working together* to fight improper classification of workers as "independent contractors."

And now, California -- who is NOT a state listed above -- has enacted legislation effective for the new calendar year that imposes as high as a \$25,000 per violation penalty for companies who willfully misclassify "employees" as "independent contractors." See [CA Penalties.pdf](#).

**The federal government and state legislatures send a clear message: misclassification is wrong.**

Companies should expect challenges not only from the federal and state governments, but plaintiffs' lawyers who can use "whistle blower" statutes to coax employers to confront the statutory penalties (at least in California), wage-and-hour liability, federal/state employment taxes, and ERISA obligations.

Companies must grapple with the worker classification issue now. To not do so is to take a big gamble, with very bad odds.



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