

Ohio AG Search For Misclassified Independent Contractors

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

Ohio Attorney General Richard Cordray is coordinating an effort to root out workers who have been misclassified as “independent contractors.” Because businesses do not pay state taxes on contractors, Cordray says the misclassifications cost the state and local school districts millions of dollars annually through lost tax revenues. In light of the AG’s focus on this issue, Ohio employers should ensure that their “independent contractors” do, in fact, qualify as “independent contractors” under the applicable legal standard and are not “employees.”

Under an agreement among a variety of the Ohio agencies, several state departments will share relevant information and coordinate enforcement efforts against businesses that misclassify their workers. For example, The Department of Job and Family Services, Department of Taxation, and the Bureau of Workers’ Compensation will start sharing information to help identify employers who, from the state’s perspective, are cheating the state out of tax revenues and competing unfairly against those businesses who properly classify (and pay state taxes on) their employees. Employers could be required to pay back taxes and other penalties for misclassified workers.

Classifying and paying an individual as an “independent contractor” does not mean that the individual actually is an independent contractor under the law. In Ohio, as in most states, courts follow a “right of control” test to determine the individual’s true legal status. If the employer can dictate only the end result of the work, the individual is more likely to be an independent contractor. On the other hand, if the employer can dictate

both the methods by which the worker will perform as well as the end result of the work, then the individual is more likely to be viewed as an employee. Factors in the analysis include:

1. Whether the worker is required to comply with an employer’s instructions regarding when, where and how to work;
2. Whether the employer establishes set hours of work;
3. Whether the payment to the worker is by the hour, week or month rather than by the job or on commission;
4. Whether the employer requires that the worker render the services personally;
5. Whether the employer pays business and/or travel expenses of the worker;
6. Whether the employer hires, pays, and/or supervises assistants for the worker;
7. Whether the worker is required to do the work on the employer’s premises;
8. Whether the employer requires the worker to regularly submit written or oral reports;
9. Whether the employer trains the worker; and
10. Whether the employer furnishes tools and materials for the worker.

Because of the renewed focus on this issue, Ohio employers should re-examine their classification of any independent contractors.

This client alert is for general information purposes and should not be regarded as legal advice.