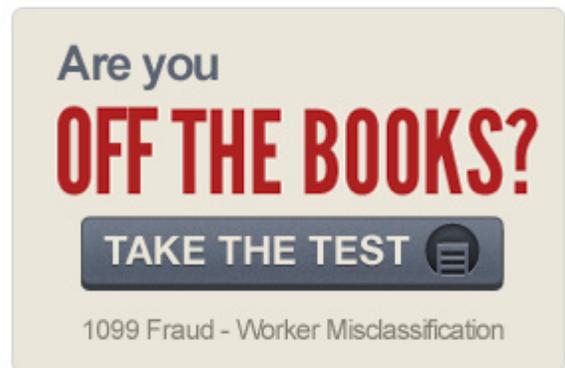


Worker Misclassification is Bad for Business

Under Missouri law, an employer is generally required to pay unemployment taxes, payroll taxes, and provide workers' compensation for its employees. The vast majority of Missouri employers comply with these requirements. However, occasionally the Missouri Department of Labor finds some employers who either intentionally misclassify workers, or are given incorrect advice from their accountants. While advising employers to classify workers that are employees as independent contractors may save a few dollars, it has very real consequences. Employers that undermine the system by misclassifying their employees as independent contractors not only place an additional burden on those that properly classify workers and hinder the workers in obtaining statutory benefits they are due, but also risk the imposition of civil and criminal penalties.

If an employer classifies an employee as an independent contractor and does not have a reasonable basis for doing so, the employer may be held liable for employment taxes for that worker. An employer that knowingly misclassifies a worker faces penalties in the amount of \$50 to \$1,000 per day per misclassified worker, and/or up to six months in jail per violation. Missouri law also allows CPAs to be refused a permit or disciplined if they are found to have committed fraud, misrepresentation, or a violation of professional trust. CPAs are certified through the Missouri State Board of Accountancy, and must adhere to strict standards and a Code of Ethics. Nearly all CPAs comply with their professional and ethical responsibilities, but those that do not should be aware that knowingly advising an employer to misclassify its employees as independent contractors to evade taxes could be considered fraud.

In 2009, the Missouri Department of Labor made identifying misclassification a priority. Since 2010, the investigations conducted by the Department's Division of Employment Security (DES) found 736 employers misclassifying more than 5,000 employees as independent contractors or something other than employees, owing more than an estimated \$816,000 in unemployment contributions. The DES identification of misclassified workers has increased by nearly 2,700 percent between 2008 and 2010. The Department will continue to work towards identifying employers cheating the system, as well as focus on educating misinformed CPAs and reporting CPAs to the Missouri State Board of Accountancy if they are found to be giving their clients illegal advice.



Knowing there are instances of gray areas, and that not all cases are black and white when it comes to classification, we encourage employers and CPAs to give the Department a call and get the facts from the experts, rather than taking a chance by making the wrong call. For assistance with questions about the proper classification of workers, please contact the DES at 573-751-1099, or via e-mail at: **esemptax@labor.mo.gov**. The Department has also created an informational page and an assessment tool for visitors to verify whether or not a worker has been misclassified. It can be found at www.labor.mo.gov/offthebooks.