

Secure Talent

Employee Misclassification Makes You a Target!

Who Is Secure Talent?

- We are industry experts in mitigating the risks associated with independent contractor misclassification and co-employment.
- We are committed to our clients' success by enabling you to engage the talent you need, when you need it, without the fear of misclassification.
 - High-touch, high-tech personalized service
 - Robust employee benefits with generous employer contributions
 - Financial investment opportunities and advisory services
 - And much more

What Is Worker Misclassification?

When an **employer** improperly classifies an **employee** as an **independent contractor**.

What Are Some of the Differences?

Employees

- Are paid on a W-2
- Are provided with tools by their employer
- Work in an environment controlled by their employer
- Output is controlled by their employer
- Are provided with training, instruction and supervision by their employer
- Work on-site
- Have access to benefits, workers' compensation and unemployment insurance protection
- Perform core functions within the company
- Participate in company sponsored programs and events
- Work for a single employer for multiple years

Independent Contractors

- Are paid on a 1099
- Operate in business-to-business contractual relationships
- Work from negotiated Statements of Work on a per-project basis
- Provide their own tools
- Are not supervised by the company
- Usually do not work solely on-site
- File their own quarterly taxes
- Invoice the company according to deliverables
- Have multiple clients
- Invest in their businesses
- Maintain business licenses and insurances

What Is the Current Compliance Landscape?

- In 2005, an estimated **10 million independent contractors** in the U.S. accounted for roughly **7.5% of the total workforce**.
- **Government auditing** agencies use various tests including the **3 categories/20 factors** to qualify 1099 status.
- A leading U.S. employment law firm estimates that more than **48% of all independent contractors** are currently **misclassified**.
- The GAO reports that **38% of companies** examined **misclassify** workers as **independent contractors**.

What Is the Current Compliance Landscape?

- **IRS Audits** increased **41%** for small businesses from 2005-2007.
- **3.4 million** employees are **misclassified** as independent contractors.
- An estimated **\$2.72 billion** is owed to the IRS due to **employee misclassification**.
- More **legislation** was introduced in 2007-2008 to combat **abusive employee classification practices** — harsh **financial and criminal penalties** are proposed.
- One state agency reportedly claims that **92%** of independent contractors are **misclassified**.

What Are the Driving Factors?

- **Budget shortfalls** are forcing federal and state **government agencies** to aggressively **target companies** for **billions in unpaid taxes**.
- **Legislators** are responding to constituents **demanding** that workers receive **protection** under applicable laws, codes and regulations, for example, **Title VII, FLSA**.
- Honest, compliant businesses push **government** action to **stop unfair and anticompetitive** business practices.

What About Liabilities, Lawsuits and Legislation?

- **Companies are responsible for all employee and employer back taxes, plus penalties and fines.**
- **Exponential** growth in **legislation** and **government action** puts **you** and your company at **greater risk**.
- Increases in the amount of **penalties**, number of **penalties** and severity of **penalties** including **felonies**, as a result of recent and proposed legislation.
- High-profile **multimillion-dollar** – potentially **multibillion-dollar** – **lawsuits** are raising the stakes:
 - FedEx (IRS, NLRB, DOL)
 - Microsoft (IRS)
 - Wal-Mart (ICE, IRS)
 - Safeway (PROA)
 - Air Courier International (CA EDD)
 - Time Warner (DOL)
 - Allstate (EEOC)

Liabilities, Lawsuits and Legislation?

Federal Level

- House Committee on Ways and Means (05/2007)
- QETP – Questionable Tax Practices Memorandum of Understanding (11/2007)
- H.R. 3408 - Taxpayer Responsibility, Accountability and Consistency Act of 2009 (7/2009) p

State Level

- New Jersey – Construction Industry Independent Contractor Act (07/2007)
- New York – Governor’s Executive Order for Joint Enforcement Task Force on Employee Misclassification (09/2007)
- Connecticut – Substitute Senate Bill No. 931 (10/2007)
- Iowa –Worker Misclassification Task Force Report (12/2008)
- New Hampshire – New independent contractor definition takes effect (01/2008)
- Illinois – Employee Classification Act (01/2008)
- Michigan – Interagency Task Force on Employee Misclassification (02/2008)
- Minnesota – Independent Contractor Exemption Certificate – Construction Industry (1/2009)
- Maryland – SB 909 Workplace Fraud Act of 2009 (5/2009)
- Colorado - HB1310 – Aimed at Stopping Worker Misclassification (6/2009)

What Are the Barriers to Compliance?

Myth

- It's difficult and complicated.
- It takes too much time at the risk of losing talent.
- It costs more.
- The risk is insignificant.

Fact

- It's not a core competency.
- High-touch, high-tech process and service simplify and streamline.
- Reduces operational and administrative costs.
- You can't buy the insurance after the hurricane has hit!

What Is the Cost of Misclassification?

Independent Contractor Payment **\$90,000**

Employer Reclassification Costs:

Employer Taxes **\$8,551**

Employee Taxes **\$32,425**

Interest **\$2,459**

Penalty **\$4,098**

Benefits **\$27,000**

Cost of 1 Reclassified Worker **\$74,553**

Cost of 25 Reclassified Workers **\$1,863,825**

Cost of 100 Reclassified Workers **\$7,455,300**

The employer is responsible for all back taxes i.e., employer and employee.

Additional costs may apply e.g., stock options, overtime, lost productivity, negative publicity, class action lawsuits, etc.

What Are the Penalties?

Agencies & Actions

- Department of Labor
- EEOC
- NLRB
- Private Right of Action
- IRS
- Various State Agencies

Penalties

- Total of Unpaid Taxes
- Penalties
- Fines
- Punitive Damages
- Compensatory Damages
- Liquidated Damages
- Equitable Relief
- Back-Pay
- Reinstatement
- Expenses
- Back Wages
- Criminal Penalties, e.g., Misdemeanor, Felony, Imprisonment

What Triggers an Audit?

- **Unemployment insurance claim**
- **Workers' compensation claim**
- **High 1099 volume**
- Claim for unpaid overtime
- 1099 and W-2 issued for same worker in same year
- Claim of wrongful discharge
- EEOC, NLRB complaint
- ADA, OSHA claim
- A single 1099 in a calendar year
- New technology tracking tool used by some states

November 2007 memorandum of understanding between federal and state agencies.

Why Choose Secure Talent?

What we offer:

- 1099 Risk Assessment
- 1099 Evaluation & Classification Services
- 1099 Managed Services
- Complete Payrolling Services

How we help:

- Identify financial risk due to potential misclassification.
- Ensure correct classification of independent contractors.
- Provide complete payrolling services, including employee benefits with a generous employer contribution.
- Manage 1099 invoicing and payment.

1099 Risk Assessment

- Identification of the 1099 population.
- Assessment of financial risk.
- Formal reporting of all findings and recommendations for risk mitigation.

1099 Evaluation & Classification

- Evaluation and classification of independent contractors.
- Process management through our proprietary Web-based solution.
- Review, verification and recommendation by two compliance experts.
- Comprehensive compliance audit file construction and maintenance.

1099 Managed Services

- Invoice and payment processing.
- Contract management.
- 1099 issuance.

Complete Payrolling Services

- Secure Talent serves as employer of record.
- High-touch, high-tech service.
- Personal sign-ups, on-boarding and orientation for new workers.
- E-timekeeping.
- Weekly paychecks and expense reimbursements.
- Direct deposit.
- Employee benefits with a generous employer contribution.
 - Health
 - Dental
 - Vision Care
 - Life Insurance
 - Long Term Disability
 - 401(k)
 - Financial Advisory Services
 - 529 College Savings Plan
 - Commuter Check Program
 - 24 Hour Fitness Membership
 - SRC Plan
 - Disability Income Plan
 - Accident Indemnity Plan
 - Cancer Indemnity Plan
 - Personal Sickness Indemnity Plan

Our Promise to You

Engage the talent you need, when you
need it, without the fear of
misclassification.

Seize Talent. Minimize Risk.



Non-Compliance with
Federal and State 1099 Regulations **Makes You a Target**

Complete Payrolling Services | 1099 Risk Assessment, Evaluation & Classification | 1099 Managed Services

Contact Us

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For compliance resources and whitepapers, visit us online at:

www.SecureTalent.com