

## Legislation targets worker misclassification

Several proposed federal laws aim to get tough on firms that misclassify workers as independent contractors. Meanwhile, some staffing firms say interest in the issue of compliance is rising among staffing users.

The latest federal bill, the “Employee Misclassification Prevention Act of 2008,” was introduced May 21 by Representatives Lynn Woolsey, D-CA, and Rob Andrews, D-NJ.

“Employers who misclassify their employees as independent contractors rob workers of needed pay and benefits and cost government at all levels substantial uncollected revenue,” Woolsey said in a statement.

The bill, H.R. 6111, would clarify that misclassification is a violation of the law. It would also increase penalties for misclassification, require employers to notify workers of their rights to challenge their classification and allow the Department of Labor and IRS to refer incidents of misclassification to one another.

State unemployment insurance agencies would also be mandated to conduct audits to identify employers misclassifying employees, under the bill. The Department of Labor would be required to audit industries that frequently misclassify employees.

The lawmakers cited a Coopers & Lybrand study that estimated the federal government lost \$34.7 billion in taxes between 1996 and 2004 because of misclassification of workers.

The lawmakers also cited a Government Accountability Office study that found more than 10 million U.S. workers are classified as independent contractors, and a Massachusetts study that found 11.4% of that state’s construction workers had been misclassified as independent contractors between 2001 and 2003.

### Business interest

While legislators are interested in independent contractors, there’s also interest in the business community.

Gene Zaino, president and CEO of MBO Partners, a Herndon VA-based firm that works with independent contractors, said there’s a tremendous amount of interest at this time in issues surrounding the use of independent contractors.

“I think people are becoming more aware of it, and the independent contractor segment of the workforce has been growing dramatically,” Zaino said. People are realizing that they need to use best practices and minimize risk, he said.

Jason Posel, senior VP of The Albany Group, also said interest is rising.

“I see that companies are becoming more and more aware of 1099 compliance issues,” Posel said. “I think the larger companies have probably been aware of this anyway since the Microsoft case,” he said, but now even smaller companies are gaining interest.

Microsoft was sued in the late 1990s by freelancers claiming they were really employees of Microsoft and entitled to benefits, including employee stock purchase rights. Microsoft ultimately settled for almost \$100 million. FedEx Ground, a division of

FedEx Corp., is now facing legal action over the classification of its drivers as independent contractors.

Companies can face a challenge when a worker with skills critical to a project will only work on a 1099 basis, Posel said. And there can be differences of opinion between a human resources department that wants things done one way and a hiring manager who wants a person onboard.

Posel said Albany has software that provides an online questionnaire for both the hiring manager and the prospective contractor to come up with a recommendation on whether the person should work as a contractor or as an employee. If the person qualifies, the staffing buyer can contract with the worker directly. Otherwise, Albany can payroll that person and become the employer of record.

### Other bills

In addition to Woolsey and Andrews’ bill, other proposed federal legislation dealing with misclassification of workers include H.R. 5804 and S.2044.

S.2044, the “Independent Contractor Proper Classification Act of 2007,” would allow the Internal Revenue Service to issue regulations and rulings on independent contractor status and require employers to notify independent contractors of their tax obligations and right to seek a determination of their status from the IRS. The bill would also end industry practice as a justification for misclassifying workers and would require information on challenging a classification to go on workplace posters required by the Fair Labor Standards Act.

In addition, it would prohibit retaliation by employers and require them to maintain a list of their independent contractors for three years.

This legislation would require reporting to the IRS of payment. The bill was introduced by Barack Obama in September.

Rep. Jim McDermott, D-WA, on April 15 put forward the “Taxpayer Responsibility, Accountability and Consistency Act of 2008,” H.R. 5804. It would allow for a determination of workers’ employment status and prevent retaliation against the workers. The bill would also require the Secretary of the Treasury to issue an annual report on the effects of misclassification. H.R. 5408 was referred to the House Committee on Ways and Means.

In addition to federal legislation, the American Staffing Association reported that several states have made worker misclassification a priority this year. ◇

### Japanese police arrest three at staffing firm

Japanese police arrested three internal employees of Japanese staffing firm Goodwill Inc., a subsidiary of the Tokyo-based Goodwill Group Inc., the company announced May 3. The Japan Times reported that one of those arrested was Taisuke Uemura, chief of Goodwill’s business planning division.

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