



*Let us help you manage your benefits cost and risk.*

## Worker Classification Diagnostic

The issue of whether or not to treat payments for services rendered by an individual as wages subject to income and employment taxes has generated much interest, especially in the wake of our current economic doldrums and corporate downsizing.

In addition, many organizations are paying their current workforce incorrectly and may be subject to wage and hour violations in addition to other federal and state sanctions.

The Internal Revenue Service, Department of Labor and numerous state agencies have been aggressively challenging the treatment of individuals as independent contractors for employment tax purposes, while simultaneously addressing the wage and hour treatment of their employees. In fact, many large employers have undergone large reclassification audits, which have often resulted in the payment of substantial back taxes, interest, penalties and fines.

### Independent Contractor

- ❖ By contracting with an independent contractor, an organization eliminates the need to remit state and federal employment taxes, pay workers compensation, pay overtime, and provide benefits—all of which are financial incentives for an organization striving to maintain quality service at a reasonable margin.
- ❖ If while under a governmental audit or review it is discovered that workers have been misclassified as independent contractors, the employment tax exposure alone to the organization can be as high as 50% (including interest and penalties) of the income earned for all misclassifications identified. The exposure could also jeopardize the benefit plans of the employer.
- ❖ The fundamental question that should be asked regarding all independent contractor relationships is: Who has the right to control the individual performing the services as to the manner, method or means of accomplishing the work? Whether this “right” is exercised or not is immaterial; the mere fact that the right rests with the employer is enough to establish an employer and employee relationship.

### Exempt / Non-exempt Employees

- ❖ Many companies have promoted individuals to positions bearing titles that would normally be classified as exempt positions. However, the day-to-day activities performed by the individual may not indicate that they are in an exempt classification under the FLSA.
- ❖ The presumption under the Fair Labor Standards Act (FLSA) is that employees are covered by minimum wage and overtime provisions. An employer must prove that an employee is an exempt executive, administrator or professional in order to free itself from the obligation to pay premium wages for hours worked in excess of 40 in one week.
- ❖ Two fundamental questions that need to be asked regarding all employees classified as exempt are: Does the employee perform work of substantial importance to the management and operation of the business? Does the employee produce the output that is the employer's principle objective?



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## **The Process**

- ❖ Review job descriptions and titles
- ❖ Revise job descriptions, as necessary, based on actual job duties
- ❖ Review independent contractor relationships
- ❖ Conduct a reverse audit to determine exposure and tax liability
- ❖ Provide client with a detailed report of the job classification audit
- ❖ Work with client and legal counsel on recommendations and resolutions
- ❖ Provide litigation support services, if necessary