



Worker Classification Task Force Established in Virginia

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BY: KYLE H. WINGFIELD & AMANDA M. WEAVER

On August 14, 2014, Virginia Governor Terry McAuliffe signed Executive Order 24 to establish an inter-agency task force on worker misclassification and payroll fraud. The task force is a response to a 2012 report of the Joint Legislative Audit and Review Commission finding that one-third of audited employers in certain industries misclassify their employees. As part of the initiative, the task force will review statutes, regulations and enforcement practices related to worker misclassification and payroll fraud. The task force's findings may have a significant impact on ensuring taxpayers' compliance with Virginia payroll and employment tax laws. [See Va. EO-24 \(Aug. 14, 2014\).](#)

One focus of the initiative will be workers who are misclassified as "independent contractors." Virginia courts have traditionally considered four factors when analyzing whether a worker should be classified as an "employee" or an "independent contractor": whether the alleged employer (1) selects or engages the individual; (2) pays the individual's compensation; (3) has the power to dismiss the individual; and (4) has the power to control the work of the individual. Of these factors, the power of control is most determinative. Therefore, even if an employer hires, pays, and has the ability to fire a worker, these factors do not necessarily make that individual an "employee" unless the employer has the power to control the individual's work on a day-to-day basis.

For employers, the initiative will mean increased enforcement of payroll requirements and potential liability for employers whose employees are incorrectly classified as "independent contractors." This is because employers are required to pay certain taxes and provide certain benefits for their employees, such as payroll taxes, workers' compensation insurance, and unemployment insurance, which are not owed to independent contractors. In addition, employees are entitled to minimum wage and overtime protections, while independent contractors are not. If an individual has been misclassified as an "independent contractor," his or her employer could owe significant amounts of unpaid taxes, insurance premiums, or even wages. Employers should therefore take care to ensure that any individuals being paid as "independent contractors" are not misclassified.

Related People

- Amanda M. Weaver – 804.420.6226 – aweaver@williamsmullen.com
- Kyle H. Wingfield – 804.420.6445 – kwingfield@williamsmullen.com

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