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### California's Tough New Independent Contractor Law

The IRS, Department of Labor and many state agencies are taking aim at businesses using independent contractors. See [IRS, DOL And States Mount Independent Contractor Attack](#). Why? Paying an independent contractor means no wage withholding, no employment taxes, no unemployment insurance, no workers' compensation, and no liability for pensions and fringe benefits. Even the red tape of nondiscrimination rules go out the window.



When you look at the advantages of using independent contractors and at the amorphous question of who qualifies, it's no wonder some businesses push the envelope. With tax revenues everywhere suffering, that leads to enforcement. Besides enforcing **existing** laws, legislatures are adding to this potent stew.

California passed [SB 459](#) to increase the stakes:

- California's [Labor and Workforce Development Agency](#) can fine you for "willfully misclassifying" an employee from \$5,000 to \$15,000 per violation.
- The penalty goes up to \$25,000 per violation if you commit a "pattern and practice" of "willfully misclassifying" workers.

- There's joint and several liability for consultants (but excluding practicing lawyers) who advise employers on such independent contractor engagements.
- It's unlawful to charge misclassified independent contractors any fee or take deductions from the compensation paid to them. Companies cannot deduct fees for goods, materials, space rental, services, government licenses, repairs, etc. provided to contractors who are reclassified.

These penalties **are in addition** to existing penalties, interest and taxes for misclassifying contractors. California's [Labor Commissioner](#) can enforce the law, but [Private Attorney General Act](#) lawsuits also seem allowed. Plus, if a business has willfully misclassified an independent contractor, a prominent public notice must be posted for one year on a website or worksite reciting the misclassification.

**What's Willful Misclassification?** It can be hard to tell whether someone is an [independent contractor or an employee](#). So how do you know you won't be labeled "willful" if it turns out you misclassified someone? "Willful misclassification" means avoiding employee status for an individual "by voluntarily and knowingly misclassifying that individual as an independent contractor." Does a good faith dispute over the individual's classification mean you **can't** be "willful?" It's not clear.

**Extra Construction Industry Penalty.** California's licensed contractors are in for extra pressure. Any final determination of misclassification must be sent to the [Contractors' State License Board](#) which "shall" initiate disciplinary action against the contractor within 30 days.

For more, see:

[California SB 459 penalizes employers for misclassifying independent contractors](#)

[Squeezing Out Contractors](#)

[Are Lawyers Independent Contractors Or Employees?](#)

[IRS Won't Tell States Worker Status Amnesty Details](#)

[Will IRS Independent Contractor Amnesty Cover States Too?](#)

[Is IRS Making Independent Contractor Treatment Even Harder?](#)

[No Get-Out-Of-Jail-Free Card For Payroll Tax Liability](#)

[Independent Contractor or Employee? The 100-Year War](#)

[Some Control Won't Convert Independent Contractors To Employees](#)

[Criminal Penalties For Misclassifying Independent Contractors?](#)

[Independent contractor versus employee](#)

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