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THE TAX LAWYER

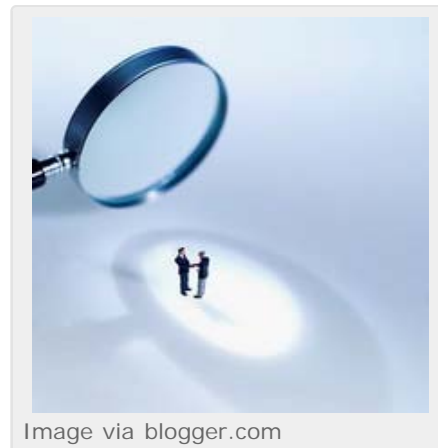
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IRS, DOL And States Mount Independent Contractor Attack

Some simple business decisions have enormous tax and legal implications, like whether to hire someone as an employee or an independent contractor. It's no secret that it's cheaper to hire independent contractors. You don't have to withhold taxes or pay any benefits. They are easier to fire too.

But increasingly you might wonder if this is a no-brainer. You might be kidding yourself and end up paying **way** more in the long run. Plus, the long run may be right around the corner. The contractor versus employee decision isn't only about taxes but involves labor and employment law, employee benefits, worker's compensation, unemployment insurance and more. See [Ten Things GAO Has to Say About Employee Contractor Misclassification](#).

If you treat employees as independent contractors and fail to withhold taxes the IRS can reclassify them and assess potentially crippling retroactive penalties. There are other **consequences** too. See [Ten Consequences of Reclassifying Independent Contractors as Employees](#). The IRS is increasingly swapping information with state and local



agencies so one dispute can trigger others. A recent example of unheralded cooperation involves the IRS, Department of Labor (DOL) and 11 states who say home builders routinely misclassify workers as independent contractors. See [Homebuilders Targeted by U.S. Along With Hotels Over Pay Abuses](#) and [States, IRS Join Probe of Home-Builder Pay Practices](#).

The IRS, DOL and state governments are [banding together](#), claiming violations of minimum wage, overtime and benefits rules, plus failure to withhold taxes. See [DOL News Release](#). A [GAO report](#) claims the IRS is losing billions on worker misclassification, and a [DOL](#) study says up to 30% of employers misclassify workers. In the DOL spotlight are home builders Lennar Corp., KB Home, D.R. Horton, Pulte Group and NVR, Inc.

As in any industry, who is an independent contractor depends on the facts. Many companies go out of their way to classify workers as independent contractors, but such arrangements can be scrutinized and lines often blur. Classically, employees go to work at set hours while independent contractors determine their own.

Employees follow orders, while independent contractors work however they prefer. Employees receive regular paychecks while independent contractors are paid by the job. Employees work year-round, while independent contractors are temporary. Employers have control over the actions of employees, while the method, manner, and means of production are left to independent contractors.

Of course, these are archetypes. Real-life fact patterns are rarely so clear and therefore require analysis. The stakes are changing with unfettered information exchanges among state and federal agencies. See [10 Reasons to Worry About Worker Status Disputes](#).

The seamless flow of information means one investigation often triggers another. Even a small worker status dispute you think isn't worth fighting may trigger a large one. Like dominos, one can fall after another. Get ready.

For more, see:

[Labor Dept. expands enforcement of wage violations](#)

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

[Winning Independent Contractor Battles](#)

[IRS Narrows Independent Contractor Relief](#)

[Ten More Consequences of Reclassifying Independent Contractors as Employees](#)

[Even Consulates Have Independent Contractor Problems!](#)

[Employers Who Violate Tax Law May Go To Jail](#)

[1099 Or W-2?](#)

[IRS Nightmare: What Employment Taxes?](#)

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

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

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