

**NCSL 2010 FALL FORUM:**  
**EMPLOYEE MISCLASSIFICATION**

**PRESENTED BY:**

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## TOPICS FOR TODAY'S DISCUSSION:

1. OVERVIEW OF MISCLASSIFICATION FROM A HUMAN RESOURCES PERSPECTIVE
2. HOW BUSINESSES DECIDE ON WORKER CLASSIFICATION (i.e., EMPLOYEE OR INDEPENDENT CONTRACTOR)
3. BARRIERS TO PROPER WORKER CLASSIFICATION
4. CHALLENGES FOR BUSINESSES THAT "PLAY BY THE RULES"
5. LEGISLATIVE CHANGES WHICH COULD IMPROVE COMPLIANCE, REGULATION AND ENFORCEMENT

# WORKER MISCLASSIFICATION FROM A HUMAN RESOURCES PERSPECTIVE

Sometimes-Ambiguous Regulations & Guidance (or lack thereof)

Employee Relations Issues (e.g., benefits & privileges of employment vs. independent contractor status)

Competing Interests: Business Needs vs. Proper Classification

The Joy Of Audits (!)



# HOW BUSINESSES DECIDE WORKER CLASSIFICATION (i.e., EMPLOYEE OR CONTRACTOR?)

- INTRODUCTION OF THE WORKER/ASSIGNMENT
- IRS GUIDANCE -
  - Behavioral Control
  - Financial Control
  - Type of Relationship

(Sources: “Employee vs. Independent Contractor: Seven Tips For Business Owners”; Summertime Tax Tip 2010-20; & IRS Form SS-8)
- STATE & MUNICIPAL STATUTES AND GUIDANCE
- COMPETING INTERNAL INTERESTS AND CONCERNS  
(e.g., HR; Legal; Finance; and/or Executive Departments)

# BARRIERS TO PROPER WORKER CLASSIFICATION



## INTERNAL:

- Cost pressures
- Annual budget headcount limitations/restrictions
- Economic uncertainty (i.e., will future sales activity allow us to make this assignment a full-time, regular position?)

## EXTERNAL:

- Ambiguous regulations
- Timeliness of guidance

# CHALLENGES TO BUSINESSES THAT “PLAY BY THE RULES”

- ◆ Competitive bidding becomes less-competitive
- ◆ Higher overall tax costs ( = less hiring)
- ◆ Higher benefits costs ( = less hiring)
- ◆ Higher workers’ compensation costs ( = less hiring)
- ◆ Higher unemployment experience rating when assignments come to an end

## LEGISLATIVE CHANGES WHICH COULD IMPROVE COMPLIANCE, REGULATION AND ENFORCEMENT



- Clear, concise statutes & regulations, in concert with IRS code, which reduce/eliminate “gray” areas;
- Adopt uniform, nationwide standards, so that “playing fields” are level in all states;
- Establish time deadlines for determinations of worker status
- Simultaneously, increase penalties for non-compliance, as a further deterrent

# LET'S REVIEW

1. The Role Human Resources Plays
2. How Businesses Decide Worker Classification
3. Barriers To Proper Worker Classification
4. Challenges For Businesses That “Play By The Rules”
5. Legislative Changes Which Could Improve Compliance, Regulation And Enforcement