

OUR INSIGHTS

Rhode Island and Federal Officials Agree to Cooperate in Investigating Independent Contractor Misclassification

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On May 7, 2015, the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) and the Rhode Island Department of Labor and Training (RI-DLT) entered into a Memorandum of Understanding (MOU) in which they agreed to share information on independent contractor misclassification and coordinate law enforcement efforts in that area. The DOL's Solicitor of Labor, M. Patricia Smith, commented that "working with the states is an important tool for ending misclassification and other workplace abuses. These collaborations allow us to better coordinate and ensure compliance with both federal and state laws alike." At the start of the year, the DOL announced that reducing independent contractor misclassification would be one of its key initiatives in 2015, and as part of that effort, it reported increasing its number of wage and hour investigators in 2014 from approximately 730 to over 1,000.

Rhode Island becomes the 21st state to partner with the DOL on the issue of independent contractor misclassification. The other states to have partnered with the DOL include [Alabama](#), California, Colorado, Connecticut, [Florida](#), Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New York, Utah, Washington, Wisconsin, and Wyoming.

In the Rhode Island MOU, the DOL and RI-DLT specifically agree to coordinate investigations and other enforcement activities, make referrals to one another of complaints and potential misclassification violations, exchange statistical information on incidences of violations in specific industries and geographic areas, and jointly disseminate outreach materials to the public.

Improper classification of independent contractors has already received significant attention from the RI-DLT and the Rhode Island Office of the Attorney General in recent years, and in light of these significant enforcement enhancements between state and federal authorities, employers that rely on the use of independent contractors are well advised to reevaluate their practices under both state and federal wage and hour laws. It is important to remember that although the state and federal agencies are distinct, the increased sharing of information between them makes it more likely that an employer's isolated practice could result in penalties and liability under multiple state and federal statutes simultaneously, with the possibility of doubling—or even trebling—damages depending on the type and degree of violation. Thus, although using independent contractors may be an attractive option from a cost-of-labor perspective, employers must carefully consider the

risks and implement effective strategies to avoid problems later on.

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