

Independent Contractor . . . or Not? DOL and Wisconsin DWD Team Up to Reduce Employee Misclassification

[Keith E. Kopplin](#) | January 26, 2015

On January 20, 2015, [the U.S. Department of Labor \(DOL\)](#) announced that [Wisconsin](#) had become [the latest state](#) to join the “[Misclassification Initiative](#),” which is designed to protect the rights of employees “by preventing their misclassification as independent contractors or other nonemployee statuses.” Wisconsin is the [19th state](#) to sign a Memorandum of Understanding (MOU) with the DOL for the purpose of sharing information and coordinating enforcement regarding employee classification. The MOU between the DOL’s Wage and Hour Division and Wisconsin’s Department of Workforce Development has an initial term of three years.

Workers that do not have the employment status “employee” are not eligible for minimum wage and overtime compensation, job-protected leave pursuant to the federal Family and Medical Leave Act, workers’ compensation benefits, and unemployment insurance benefits, among a number of other rights and benefits under law. In addition, employers engaging independent contractors, as opposed to employees, are not required to pay certain taxes, thereby depriving the government of revenue.

To combat the tax implications associated with misclassification, the Internal Revenue Service (IRS) launched the [Voluntary Classification Settlement Program \(VCSP\)](#), which is a “voluntary program that provides an opportunity for taxpayers to reclassify their workers as employees for employment tax purposes for future tax periods with partial relief from federal employment taxes.” While the VCSP may provide tax relief, it is important to note that the IRS also entered into a MOU with the DOL, the purpose of which is to share information and collaborate in order to “reduce the incidence of misclassification of employees as independent contractors, help reduce the tax gap, and improve compliance with federal labor laws.” The IRS has indicated that it will not share information regarding the VCSP with the DOL, but employers should consider this possibility when evaluating whether to participate in the program.

Employers should consult with counsel and carefully evaluate any non-employees they currently engage to ensure that they are properly classified for purposes of state and federal taxation, as well as compliance with state and federal employment laws.

More information on this Memorandum of Understanding can be found on the [DOL’s website](#).

[Keith E. Kopplin](#) is of counsel in the Milwaukee office of Ogletree Deakins.

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