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Independent contractor misclassification can result in big fines

A recent settlement shows just how much the U.S. Department of Labor dislikes seeing employers game the system by trying to classify employees as independent contractors. In late November, a federal judge in Oregon approved an agreement that pays out a $3.2 million settlement, to be split among 120 courier drivers who were unlawfully classified as contractors.

It's a sign that DOL isn't backing down from aggressively pursuing employers who skirt the Fair Labor Standards Act.

The case involved three Portland delivery companies—Driver Resources, Senvoy and ZoAn Management—all owned by a single individual. The DOL accused him of violating the FLSA's minimum wage and overtime requirements by creating the companies to skirt the law and requiring drivers to become independent contractors.

The drivers all signed on as independent contractors with Driver Resources, which then assigned them to drive for Senvoy or ZoAn. Once they began working, they were charged for expenses such as gas and vehicle maintenance while using their own vehicles to deliver for Senvoy.

In addition to back pay for minimum-wage and overtime violations, the court-supervised settlement requires the companies to immediately classify all drivers as employees. A third party will audit their employment practices in the future.

In announcing the settlement, the DOL noted unscrupulous employers that misclassify employees as contractors put honest competitors at a disadvantage. It also noted that misclassifying employees as independent contractors makes it harder for states and the IRS to collect appropriate tax payments.

Final note: It is possible to convert employees into independent contractors if they are truly going to be independent contractors. That means, among other things, that the former employees are free to work for other entities, truly run their own businesses and are able to perform services with minimal supervision.

But simply calling workers independent contractors and then shifting costs to them isn't going to work. Always get legal expert help when converting existing employees into independent contractors or signing on new workers to be independent contractors.

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