UBC Summary of GAO Report

GAO:
Misclassification a Problem--More Collaboration and Enforcement Needed

Full report at http://www.gao.gov/new.items/d09717.pdf

The Government Accountability Office (GAO) has issued a report on misclassification: *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* GAO-09-717 (August 2009)

The report begins by saying, "The national extent of employee misclassification is unknown; however, earlier and more recent, though not as comprehensive, studies suggest that it could be a significant problem with adverse consequences."

Found in the report's discussion:

- Audits by state unemployment divisions show and upward trend in misclassification. In 2007 the states found, at least, 150,000 misclassified workers, but this undercounts the problem since it only reflects audits of 2% of all employers each year. (p. 12)
- While some employers misclassify because they are confused, others do it to evade their legal obligations and gain a competitive advantage over law-abiding employers. (pp. 5-6 and 39)
- According to an IRS study in 1984, 15% of employers misclassified 3.4 million workers as independent contractors, costing $1.6 billion a year (in 1984 dollars). (p. 10) A new study is being planned, but IRS says it will not be complete until 2013. (p.11)
- The construction industry is cited frequently as misclassifying employees as independent contractors (e.g. pp. 13 and 14), including on federal construction projects. (p. 29)
- There is a lack of information sharing by DOL and between DOL and state agencies. (e.g. pp. 15 and 27)
- There is little accurate tracking of misclassification cases by DOL and cases of off-the-books payments aren't routinely reported. (e.g. pp. 13-14, 17-18 and 27-28)
- There is a lack of targeted investigations by federal agencies. (e.g. pp. 15-17)
- There is limited use by DOL of education and penalties to deter misclassification. (pp. 18-20)
- Several states with collaborative enforcement task forces, including the New York Misclassification Task Force, are reporting successes with interagency cooperation and targeted investigations. (e.g. pp. 17-20, 31-32)
- The IRS' Questionable Employment Tax Practices Program is promising. (pp. 23-24, 29-30)
- The section 530 safe harbor rules are an impediment to classification examinations and education of taxpayers. (pp. 26-27)
- States are particularly concerned about the effect of misclassification on workers' compensation requirements and unemployment revenue. (p. 31)

The GAO recommendations to the executive branch begin on page 41:

1. The DOL Wage & Hour division should focus on misclassification in its targeted investigations.
2. To improve protection of workers, DOL and OSHA should share information on misclassification, and make referrals to state and other agencies if an issue is outside of their jurisdiction.

3. To identify best practices and efficient use of enforcement resources, the DOL and IRS should establish a joint interagency effort with other federal and state agencies. Laws that prevent the sharing of information between agencies should be changed if needed.
4. DOL and IRS need to educate workers on classification issues and their tax consequences through a notice to be provided by employers.
5. The IRS should enhance its Questionable Employment Tax Practices program by identifying and addressing any issues regarding information sharing.
6. The IRS should take additional steps to encourage employers to use its Classification Settlement Program.

The IRS, DOL and OSHA have agreed with the GAO recommendations.

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