

First Financial Employee Leasing, Inc.

Newsletter

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Misclassification of Employees as Independent Contractors

Unemployment continues to plague the nation resulting in higher SUTA and FUTA rates for employers. Due to those increased rates, employers may attempt to avoid payroll taxes on employees by misclassifying them as independent contractors. This can have severe consequences.

Beginning in February 2010, the IRS will begin targeting 6,000 randomly selected employers. In addition, independent contractors who believe they really should be employees can turn-in employers by filing a form with their taxes - giving the IRS and the Department of Labor (DOL) more leads.

For example: Maria used independent contractors in her small catering company during the holidays and other times when she had a surge of business. Her accountant advised her to do so because it was permitted by IRS regulations. Accordingly, she did not withhold payroll tax or offer these workers any of the benefits that she gave to her permanent employees. Everyone was happy with this arrangement - for a while. A DOL inspector was called, came into the shop and advised that even though the IRS rules were being followed, the DOL had different rules. Maria had to reclassify her independent contractors as employees and pay back her portion of the payroll taxes that she failed to withhold over the years, plus penalties - a costly lesson.

The IRS deals with tax issues, while the DOL protects employees. The DOL applies the Economic Reality Test to determine whether workers are independent contractors or employees. Employees typically follow instructions about how, when and where they work. The DOL tests tend to classify more workers as employees. The IRS utilizes the Common Law Test.

The moral of the story - be sure all workers are classified properly! For more information on proper classification of employees go to www.dol.gov/whd/regs/compliance/whdfs13.htm.

ICE Announces 1,000 New Workplace Audits for I-9's

Although immigration reform has taken a back-burner to unemployment and health care, it is still not off the radar!

Last year, Immigration and Customs Enforcement (ICE) announced the largest operation of its kind in auditing 654 businesses nationwide to ensure they were maintaining properly completed I-9's.

Since that announcement and the implementation of the new ICE enforcement strategy in April 2008, ICE agents have reviewed more than 85,000 Form I-9s and identified more than 14,000 suspect documents - approximately 16% of the total number reviewed.

Statistics since the implementation show the results of this initiative:

- 45 businesses debarred (0 in 2008)
- 142 Notices of Intent to Fine totaling \$15,865,181 (32 in FY 2008 totaling \$2,355,330)
- 1,897 cases initiated (605 during FY 2008)
- 1,069 Form I-9 Inspections (503 in all of FY 2008)

Due to the success of this program, ICE announced on November 11th the issuance of 1,000 new Notices of Inspection. ICE will audit these business owners to determine their compliance with employment eligibility verification laws.

ICE is focused on finding and penalizing employers who believe they can unfairly get ahead by cultivating illegal workplaces. They are increasing criminal and civil enforcement of immigration-related employment laws and imposing tough employer sanctions to even the playing field for employers who play by the rules.

Protecting employment opportunities for the nation's lawful workplace and targeting employers who knowingly employ an illegal workforce are major ICE priorities, for which ICE employs all available civil and administrative tools, including audits. Audits may result in civil penalties and lay the groundwork for criminal prosecution of employers who knowingly violate the law.

Don't wait for the Feds to come knocking! Clients should audit their I-9 forms to make sure all forms are completed accurately. The FFEL HR Department can provide guidance on the proper process for completion of I-9 forms.

- **The IRS is watching**
- **Consequences can be severe**

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Benefits Corner

REMINDER

BENEFITS FOR NEW EMPLOYEES

Be sure to have all new employees contact FFEL's Benefits Department within the first 30 days after hire if they are interested in obtaining information on health or other benefit plans that may be available to them - no employer participation is required.

If a new employee fails to contact FFEL during their initial 30 days, benefits may be delayed as the employee may be required to wait until the next open enrollment period to sign-up.

Hearing Protection for Workers - What Employers Need to Do

Approximately 30 million American employees are exposed to excessive workplace noise, according to the Occupational Safety and Health Administration. Workers run the risk of hearing loss if they are exposed to an average of more than 85 decibels (dB) over an 8-hour workday. OSHA takes excessive noise seriously, and its regulation CFR 1910.95 requires employers in noisy workplaces to:

- Reorganize equipment, facilities, and/or tasks to reduce noise levels
- Monitor individual and work area noise levels and report high levels to employees
- Test employee hearing, with annual follow-ups
- Provide hearing protection where needed
- Provide training in the selection, proper fit, and use of hearing protection

Workers should be aware that there are many other sources of loud noise that can cause permanent hearing loss as well. iPods and cell phones are often used at dangerously high volumes and, of course, rock concerts are off the charts in terms of loud noise. Holding annual hearing protection training is a good opportunity for employers to remind their workers about the risks associated with recreational noise.

Louise Vallee, VP, Chubb & Son, said at this year's American Society of Safety Engineers conference. that "Baby Boomers have attended rock concerts and engaged in noisy recreational activities for nearly 50 years." Recent studies indicate that close to 40 million baby boomers are experiencing some degree of hearing loss—twice as many as expected. Vallee added that corporate executives must be educated about recreational hearing loss issues, which further supports the need for hearing conservation programs for the workplace.

In addition, The National Hearing Conservation Association (NHCA) has petitioned OSHA to reduce the permissible exposure limit (PEL) for noise. A letter from the group cited the fact that nearly 22 million American workers are exposed to hazardous noise on a daily basis and that occupational hearing loss continues to plague diverse industries.

Citing research from the National Institute for Occupational Health & Safety and other sources, the association claims that American workers face a considerable risk of noise-induced hearing loss from working long term under the present limits.

If workplace monitoring determines that employees need to wear hearing protection, such as earmuffs, earplugs, canal caps, or a combination thereof, employers should enforce the use of the proper personal protective equipment. Also, they should help their employees to get a good fit to provide the most protection.

The hearing protection training should include instructions to take these preventive measures:

- Keep ear protectors clean; wash them regularly according to manufacturer's instructions
- Wash your hands thoroughly before inserting earplugs
- Inspect your ear protectors before putting them on-if they're loose or cracked, report it

Workers also need to recognize the symptoms of hearing damage. Tell your workers to let you know immediately if they experience the following symptoms:

- Noise or ringing in ears
- Trouble hearing people when they speak
- Trouble hearing certain high or soft sounds
- Needing a higher volume on the TV or radio-high enough that other people complain

Report All Work-Related Injuries

Post-Accident Drug Testing Is Mandatory

All accidents and injuries that occur at work must be reported immediately to First Financial Employee Leasing, Inc. (FFEL).

Even if your employee says it's not necessary to report the injury, or if they are refusing medical treatment (especially if they are concerned they won't pass the required drug test) reporting the claim to FFEL is still mandatory. Failure to report a workers' compensation claim of any nature prevents us from taking timely appropriate action.

Unfortunately, even if the event seems to be insignificant at the time, the nature of the injury can progress. Your injured worker can also reactivate that injury claim at any point in the future when they might become disgruntled with you as their employer. When this happens, you may be left with no defense because a timely investigation was not officially completed.

If you have an employee injured on the job, immediately complete a Supervisor's Report of Injury form, which can be obtained through the Claims Management Department at FFEL or online at our website www.ffel.net under Resources/Client Forms/Risk Management.

The completed form can be faxed to the number listed and our claims staff will contact you within 24 hours to further discuss the accident/injury.

Don't put your company at risk with unreported workers' compensation claims!