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CLIENT ALERT – INDEPENDENT CONTRACTORS

Dear Client:

As you know, we have been writing and training that there have been efforts underway for the last few years by the U.S. Department of Labor ("DOL") to target employees incorrectly classified as independent contractors. Money was budgeted to increase the number of DOL investigators and to coordinate efforts with the IRS and state agencies.

Recently, DOL's coordination efforts were formalized. On Sept. 19, 2011, DOL's Secretary signed a memorandum of understanding with the Internal Revenue Service (IRS) that will improve departmental enforcement efforts to end business's misclassification of employees. In addition, agency leaders representing states signed memorandums of understanding with various DOL divisions. Among these are Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Utah, Washington, Hawaii, Illinois, Montana and New York.

The memoranda of understanding enables the DOL to share information and coordinate law enforcement with the IRS and participating states.

If you make use of independent contractors, you may want to review those arrangements to ensure that individuals are properly classified. There are various challenges in determining if an individual is an employee or a contractor; the federal and state agencies use different standards. DOL enforces the Fair Labor Standards Act which applies a seven-part "economic reality" test. It is not determined by the common law standards relating to master and servant which states often follow. The IRS generally follows a 20-factors test as outlined in Revenue Ruling 87-41. However, its ultimate determination is whether there is a right to direct and control the means and details of the work of the individual.

If you have any questions about your organization's practices or require assistance in determining whether someone is properly classified as an independent contractor, please contact us.

Sincerely,

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The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.

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