

# WORKER CLASSIFICATION & EMPLOYMENT TAX

Misclassification of workers as independent contractors can present significant liability risks at both the federal and state levels. To help ensure Hodgson Russ clients are well protected, our attorneys work proactively to identify potential worker misclassification issues and help create defensible independent contractor classifications where desirable and appropriate. And when claims, audits, or investigations arise, our worker classification and employment tax attorneys have extensive experience in developing solutions to avoid or minimize exposure and, when necessary, litigating such matters before the federal and state courts, departments of labor, workers compensation boards, and taxing authorities.

Businesses—and certain business owners, officers, and employees—accused of misclassifying employees as independent contractors can face substantial liability in areas that include the following:

- Unpaid taxes and penalties (e.g., federal and state income tax withholding, FICA, FUTA, SUTA)
- Workers compensation-related penalties
- Disability insurance-related penalties
- Wage and hour-related liability (e.g., failure to pay a misclassified worker minimum wage and overtime)
- Employee benefit plan risks (e.g., misclassified workers may be entitled to benefits under various employee benefit plans)
- Criminal liability, in certain cases

Given the potential scope and significance of the liability associated with misclassification, responding to and developing solutions for issues relating to the classification of workers requires a deep understanding of many different substantive areas of law, including federal and state tax law, wage and hour law, workers compensation and disability law, employee benefits law, and criminal law. Our multidisciplinary team includes attorneys with extensive experience in all of these areas.

Hodgson Russ's worker classification and employment tax attorneys have represented hundreds of clients of all sizes, from small start-ups and nonprofit organizations to major multinational corporations, in connection with worker classification matters. And our attorneys have successfully litigated worker classification matters of all sizes, ranging from cases involving a single worker to those implicating the classification of thousands. In all cases, we work with our clients to develop a holistic approach that

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## Professionals

### Attorneys

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makes business sense and takes into account the wide array of legal consequences associated with worker classification decisions.

For information, analysis, commentary, and resources on the latest developments in employment law, visit our blog, *Employers' Advisor*, or subscribe to receive new blog entries by e-mail.

### **In the News**

IRS Alone Can't Solve Independent Contractor Issue

*Bloomberg BNA*, August 2015

Properly Classifying Workers in the U.S.

*Biz TV Canada*, August 2012

### **Publications**

The Future of Tax Policy for Remote Workers

*TaxNotes Talk Podcast*, May 5, 2022

New York Employment Law

*New York Law Journal*, October 7, 2020

New York Court of Appeals Ruling on Postmates's Workers Opens Door to Unemployment Relief for Gig Economy Workers

*Hodgson Russ Labor & Employment Alert*, April 7, 2020

NLRB Regional Director Files a Complaint Alleging that Misclassification of Workers as Independent Contractors is an Unfair Labor Practice

*Labor & Employment Alert*, April 27, 2016

New U.S. DOL Memo Concludes Most Workers Are Employees, Not Independent Contractors

*Labor & Employment Alert*, July 15, 2015

The Devil Is in the Classification

*Lawyers Weekly*, November 14, 2014

New York Legislation Changes the Landscape of Worker Classification Law in the Construction Industry

*Labor & Employment Alert*, September 17, 2010

### **Presentations & Events**

Federal and State Taxation of Deferred Compensation

July 28, 2021

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2021 Hodgson Russ Summer Tax Series

July 14, 2021

What Employers Need to Know about Reopening the Workplace

May 15, 2020

Labor & Employment Seminar

Offices of Hodgson Russ LLP, New York, NY, December 12, 2019

Labor & Employment Seminar

The Century House, Latham, NY, December 5, 2019

25th Annual Labor & Employment Conference

Buffalo Niagara Marriott, Amherst, NY, November 14, 2019

Hodgson Russ Summer Tax Series: Covering the Most Important State Tax Issues in 2015

The Harvard Club, 35 W. 44th Street, New York, NY, July 29, 2015

2015 Tax Roadshow

July 15, 2015

Worker Classification Update: The Latest Developments in Employee Versus Independent Contractor Issues

New York, NY, September 26, 2013

Today's Critical Legal Issues for Physicians

New York, NY, October 10, 2012