



PRINCE WILLIAM COUNTY

Prince William County, Virginia Internal Audit Report – Independent Contractor Process Review

September 21, 2021



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TRANSMITTAL LETTER



September 21, 2021

The Board Audit Committee of
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Pursuant to the internal audit plan for calendar year (“CY”) 2021 for Prince William County, Virginia (“County” / “PWC”), approved by the Board of County Supervisors (“BOCS”), we hereby present the internal audit of the Independent Contractor Process Review. We will be presenting this report to the Board Audit Committee of Prince William County at the scheduled meeting on December 14, 2021.

Our report is organized into the following sections:

Executive Summary	This provides a high-level overview and summary of the observations noted in this internal audit, as well as the respective risk ratings.
Background	This provides an overview and interpretation of current laws, regulations, standards related to worker classification.
Objectives and Approach	The objectives of this internal audit are expanded upon in this section, as well as the various phases of our approach.
Observations Matrix	This section gives a description of the observations noted during this internal audit and recommended actions, as well as Management’s response, responsible parties, and estimated completion date.

We would like to thank the staff and all those involved in assisting our firm with this internal audit.

Respectfully Submitted,

RSM US LLP

Internal Audit



EXECUTIVE SUMMARY

Background

Starting January 2021, Virginia House Bill 1407, took effect and created a new state law that prohibits employers from misclassifying employees as independent contractors and allows the Virginia Department of Taxation to investigate and impose civil penalties against employers. Additionally, Virginia Code § 58.1-1900 through 1905 and Virginia Code § 40.1-28.7:7 expands the burden of the employer to prove that the worker is properly classified as a contractor based on the Internal Revenue Service guidelines. The new Virginia employment laws greatly restrict who can be considered an independent contractor, even if the parties previously agreed to worker classification as independent contractors.

Workers fall into three categories: employees, temporary workers and independent contractors. There are specific characteristics that must be met for workers to be classified in the respective categories.

Employees can either be full time or part time and are directly employed by an organization. Temporary workers can either be full time or part time and are employed by a staffing group. Temporary workers perform work in brief defined periods of time for specific projects or to fill budgeted positions when there is a vacancy in the position.

The County is one of the largest employers in Prince William County with over 5,000 full time, part time, seasonal and “provisional” part time employees. Additionally, vendors provide temporary worker support as needed. County departments do not commonly utilize independent contractors and all contracted services are required to meet the applicable County procurement regulations and requirements (i.e. competition). To be in compliance with the new Virginia State employment law it is critical that PWC have an established process for identifying, classifying, recording and reporting independent contractors for all departments within the County.

Overall Summary / Highlights

The observations identified during our assessment are detailed within the pages that follow. We have assigned relative risk or value factors to the observation identified. Risk ratings are the evaluation of the severity of the concern and the potential impact on the operations. There are many areas of risk to consider in determining the relative risk rating of an observation, including financial, operational, and/or compliance, as well as public perception or ‘brand’ risk.

Objectives and Scope

The primary objective of this project was to assess PWC’s processes and controls related to the regulation and engagement of independent contracted workers.

As part of our internal audit, we performed the following:

- Gained an understanding of how the County processes requests for independent contractors to perform work;
- Evaluated the current system utilized by the County to identify and monitor independent contracted workers;
- Assessed the current population of independent contracted workers to determine the risk of misclassification;
- Assessed controls utilized to manage independent contracted workers within the County; and
- Assessed the process for introducing independent contracted workers, documenting nature of the work, verifying delivery, completion, and conclusion of the contract.

We performed interviews with five County departments which had the highest likelihood of misclassification based on stakeholder inquiry. We collaborated with stakeholders within Human Resources (“HR”), Finance (both Payroll and Procurement), and the Office of Executive Management (“OEM”) to perform our procedures.

Fieldwork was performed during March 2021 through August 2021.

Summary of Observation Ratings

(See page 3 for risk rating definitions)

	High	Moderate	Low
Independent Contractor Process Review	1	-	-

We would like to thank all County team members who assisted us throughout this internal audit.



EXECUTIVE SUMMARY – CONTINUED

Observations Summary

The following is a summary of the observations noted in the areas reviewed. Each detailed observation is included in the observation matrix section of the report. Definitions of the rating scale are included below.

Summary of Observations	
Observation	Rating
1. Independent Contractor Management and Monitoring	High

Provided below are the observation risk rating definitions for the detailed observations.

Observation Risk Rating Definitions	
Rating	Explanation
Low	Observation presents a low risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of low importance to business success/achievement of goals.
Moderate	Observation presents a moderate risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of moderate importance to business success/achievement of goals. Action should be in the near term.
High	Observation presents a high risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of high importance to business success/achievement of goals. Action should be taken immediately.



BACKGROUND

Overview

Starting January 2021, Virginia House Bill 1407, took effect and created a new state law that prohibits employers from misclassifying employees as independent contractors and allows the Virginia Department of Taxation to investigate and impose civil penalties against employers. Additionally, Virginia Code § 58.1-1900 through 1905 and Virginia Code § 40.1-28.7:7 expands the burden of the employer to prove that the worker is properly classified as a contractor based on the Internal Revenue Service guidelines. The new Virginia employment laws greatly restrict who can be considered an independent contractor, even if the parties previously agreed to worker classification as independent contractors.

Workers fall into three categories: employees, temporary workers and independent contractors. There are specific characteristics that must be met for workers to be classified in the respective categories. Employees can either be full time or part time and are directly employed by an organization. Temporary workers can either be full time or part time and are employed by a staffing group. Temporary workers perform work in brief defined periods of time for specific projects or to fill budgeted positions when there is a vacancy in the position.

The County is one of the largest employers in Prince William County with over 5,000 full time, part time, and seasonal employees. Additionally, vendors provide temporary worker support as needed. County departments do not commonly utilize independent contractors and all contracted services are required to meet the applicable County procurement regulations and requirements (i.e. competition). To be in compliance with the new Virginia State employment law it is critical that PWC have an established process for identifying, classifying, recording and reporting independent contractors for all departments within the County.

Classification of Workers – Summary of unique aspects

1. **Employees**

For the worker that is classified as an employee, the organization has the responsibility to withhold the following, at a minimum, from the employee's pay:

- Federal, state and local taxes;
- Premiums for employee group health insurance benefits; and
- Deposits for retirement savings plans.

The worker classified as an employee is able to participate in various employer provided benefits (i.e. paid time off, paid holidays, retirement savings plan, and group health insurance).

2. **Temporary Workers**

The temporary worker is employed by a staffing group, not by the organization for whom they are performing work. The staffing group is responsible for maintaining the worker on their payroll, withholding and paying the requisite federal, state and/or municipal taxes and any other deductions from their pay. The staffing group may offer the worker benefits, such as paid time off, paid holidays, retirement savings plan, and group health insurance.

3. **Independent Contractors**

The independent contractor is not paid through regular payroll and is individually responsible for paying their own federal, state or municipal taxes since they do not have any requisite federal, state or municipal taxes or other deductions withheld from the payment they receive from the organization. Additionally, the independent contractor does not have the opportunity to participate in any benefits such as paid time off, paid holidays, retirement saving plans or group health insurances.

The Internal Revenue Service ("IRS") states that independent contractors are self-employed professionals who have the autonomy and right to control what and how work will be performed, that is, the employer does not have the right to control or direct the details of how services are performed.



BACKGROUND - CONTINUED

Employee and Independent Contractor Distinctions

We can utilize certain factors to distinguish between employees and independent contractors, but these factors are not always mutually exclusive and there is no set number of factors that classify a worker. Figure 1 below provides distinguishing factors that can be utilized to support the corresponding worker classification.

Figure 1: Distinguishing Factors of Employees and Independent Contractors

Employee	Independent Contractor
Usually works for only one employer (economically dependent).	Generally provides consulting services to more than one company (economically independent).
Works the hours set by the employer.	Sets their own hours.
Usually works at the employer's place of business.	Typically works out of their own office or home.
Often receives employment benefits, such as health and disability insurance.	Does not receive employment benefits from the entity.
Works under the control and direction of the employer.	Works relatively independently.
Accomplishes tasks in the manner the employer has requested.	Has the authority to decide how to go about accomplishing tasks, and does so without the entity's input.
Tends not to incur costs or make investments in the work.	Incurs the costs associated with performing the job.
Has a general education, experience, background, and receives special training from the employer in order to do the job better.	Has acquired very specialized skills and comes to the work relationship with a particularized education and experience background.
Typical differences as a result of classification	
Receives net salary after employer has withheld income tax, Social Security and Medicare tax under the Federal Insurance Contributions Act (FICA).	Is not subject to tax or FICA withholding, but pays his or her own self-employment tax.
Will likely be eligible to receive unemployment compensation after layoff or termination.	Is not eligible for unemployment compensation benefits.
Will receive worker's compensation benefits for any workplace injury.	Is not eligible for worker's compensation benefits.
Generally (unless employment is "at will") can be terminated by the employer only for good cause and with notice.	Generally (unless the consulting contract is for a specified term) can be let go by the employer for any reason, at any time.
Is covered by federal and state wage and hour laws such as minimum wage and overtime rules.	Is paid according to the terms of the contract; does not receive additional compensation for overtime hours worked.
Has the protection of workplace safety and employment anti-discrimination laws.	Usually is not protected by employment anti-discrimination and workplace safety laws.
May be entitled to join or form a union.	Is not entitled to join or form a union.



BACKGROUND - CONTINUED

Employee and Independent Contractor Distinctions

Figure 2: Illustration of an Employee and Independent Contractor

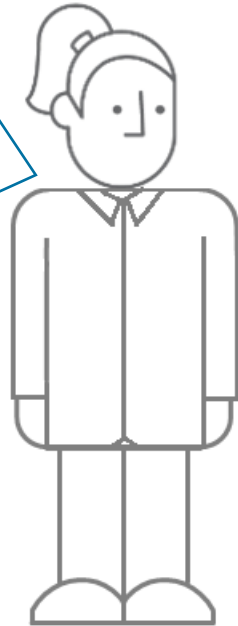
Employee

Hi! I am an employee of the County.

I work for an indefinite amount of time for an hourly wage or salary.

The County provides my tools including training and can choose to offer me benefits and reimbursements.

I get told how to do my job to achieve desired results.



Independent Contractor

Hello! I am an independent contractor for the County.

I work for a pre-determined contracted amount of time and money to complete specific tasks and projects.

I provide my own tools and do not have the option to receive benefits or reimbursements from the County.

The County does not specify how I do my job, only expected results.



Examples

- Human Resource Manager
- Procurement Director
- Police Supervisor
- Executives
- Financial Analyst

Examples

- Freelancer / Gig Worker
- Social Services Counselor
- System Implementation Support Specialist
- Graphic Designer
- Web Designer



BACKGROUND – CONTINUED

IRS Guidelines – Common Law rules for Classifying Independent Contractors

The general rule is that an individual is an independent contractor if the payer has the right to control or direct **only the result** of the work and **not what will be done and how it will be done**. The entity / employer and worker do not choose their classification, worker classification is determined by the work relationship and related factors.

There is no set number of factors that classifies a worker as an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation, may not be relevant in another.

Determining worker classification requires review of the entire relationship, considering the degree or extent of the right to direct and control, and finally, documenting each of the factors used in the determination.

According to the IRS¹, facts that provide evidence to the degree of control and independence fall into three categories:

1. **Behavioral:** Does the entity control, or have the right to control, what the worker does and how the worker does their job?

The worker may be an employee if the entity has the right to control the relationship. The entity has the right to direct and control the workers not only as to the results desired, but also as to the details, manner and means by which the results are accomplished.

The worker may be an independent contractor if the entity does not supervise or have the right to control. The right to control is key, not whether or not such control is exercised.

2. **Financial:** Are the business aspects of the worker's job controlled by the payer?

The worker may be an employee if: [1] the worker is paid regardless of performance, [2] the worker is reimbursed for expenses, and/ or [3] the employer provides tools/supplies, etc. If the worker may be rewarded, disciplined, demoted or fired depending upon job performance they are classified as an employee.

The worker may be an independent contractor if: [1] the worker is free to offer services to others in the relevant market and/ or [2] the worker has the ability to make a profit or loss.

3. **Type of Relationship:** Permanency of the relationship and importance of the worker's services.

The worker may be an employee if: [1] the entity hires the worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period and/ or [2] they provide a key aspect of the business. A continuing relationship exists between the worker and the employer.

¹ <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>



BACKGROUND – CONTINUED

Independent Contractor Regulations

Federal and state regulators take misclassification of employees seriously and have recently re-energized their efforts to challenge worker classification. Unreported or underreported employment taxes contribute to the overall federal tax gap. Federal employment withholding taxes represent nearly 70% of all federal tax revenue to be paid to the IRS, which seeks back taxes and penalties from employers that wrongly treat workers as self-employed contractors. The U.S. Departments of Labor (“DOL”) and Justice (“DOJ”) and their counterparts at the state level are involved in ensuring that workers are properly classified by their employers. A DOL investigation could include all employees and independent contractors retroactively for a three-year period of time.

Federal penalties for worker misclassification can be severe. Consequences vary depending on the DOL or the IRS’s determination of whether the misclassification was unintentional, intentional (willful), or even fraudulent.

- If the mis-classification was determined to be unintentional, the employer faces penalties based on the fact that all payments to misclassified independent contractors are reclassified as wages.
- If the IRS suspects intentional misconduct or fraud, it can impose additional fines and penalties; for example, penalties that include 20% of all the wages paid, plus 100% of the FICA taxes—both the employee and employer’s portion. Criminal penalties can be assessed for each misclassified worker, and the court can impose a prison sentence as well. Additionally, the people responsible for withholding payroll taxes may be held personally liable for any uncollected or unremitted tax under the responsible person penalty statute and its state counterparts. The IRS administers tax-related violations, while the DOL enforces federal and sometimes state labor laws, typically pursuant to the Fair Labor Standards Act (“FLSA”). Willful violators may be prosecuted criminally and fined up to \$10,000 by the DOL, or imprisoned for a second conviction.

In recent years there have been a number of cases where the courts found that an organization had misclassified independent contractors. The awards in these cases have been significant (ex. \$100K, \$13.3M, and \$18M). The settlements and awards involve providing unpaid over-time wages, healthcare benefits (including reimbursing individuals for healthcare expenses incurred while classified as an independent contractor), 401(k) and retirement and pension benefits that were available to full time employees. The organization may also be held responsible for interest and penalties on the unpaid amounts of taxes.



OBJECTIVES AND APPROACH

Objectives

The primary objective of this project was to assess PWC's processes and controls related to the regulation and engagement of independent contracted workers.

Approach

Our audit approach consisted of the following three phases:

Understanding and Documentation of the Process

We conducted interviews with the appropriate representatives from the County to discuss the scope and objectives of the assessment, obtained preliminary data, and established working arrangements. We obtained and reviewed 1) applicable laws and regulations, and County policies and procedures; 2) copies of financial information; 3) relevant guidance; and 3) other documents deemed necessary; and performed walkthroughs of the process(es) and key controls to gain an understanding of the function and assess the design of the processes/key controls.

Evaluation of the Process and Controls Design and Testing of Operating Effectiveness

The purpose of this phase was to review the existing process and controls related to managing and monitoring independent contracted workers. We performed interviews with five County departments which had the highest likelihood of misclassification based on stakeholder inquiry to determine the County's utilization of independent contractors. Additionally, we selected a sample of 25 Form 1099s to review to assess for classification.

Our procedures included:

- Gained an understanding of how the County processes requests for independent contractors to perform work;
- Evaluated the current system utilized by the County to identify and monitor independent contracted workers;
- Assessed the current population of independent contracted workers to determine the risk of misclassification;
- Assessed controls utilized to manage independent contracted workers within the County; and
- Assessed the process for introducing independent contracted workers, documenting nature of work, verifying delivery and completion of the contract and conclusion of contract.

Reporting

At the conclusion of this audit, we summarized our findings into this report. We have reviewed the results with the appropriate Management personnel, and have incorporated Management's response into this report.



OBSERVATIONS MATRIX

Observation	1. Independent Contractor Management and Monitoring
High	<p>The County does not have a system in place to consistently identify, classify, record and report independent contractors being utilized by departments. Such a system reduces the risk of misclassifying workers as independent contractors when they should be classified and treated as employees.</p> <p>County departments do not commonly utilize independent contractors to augment staffing and all contracted services are required to meet the applicable County procurement regulations and requirements (i.e. competition). It is important to note that the County and worker do not choose their classification, worker classification is determined by the work relationship and related factors. It is the County's responsibility to prove that a worker is not an employee using IRS standards. Based on interviews with key stakeholders within HR, Finance (Payroll and Procurement), and OEM there is no process in place to monitor the classification of workers to validate compliance with both Virginia state regulations and IRS standards.</p> <p>Since the County does not have a mechanism in place to identify independent contractors throughout the departments, we were unable to obtain data to determine the full population of independent contractors. Based on interviews with five (5) large County departments, we identified two (2) departments that described certain workers which may be classified as independent contractors based on IRS guidelines:</p> <ul style="list-style-type: none"> • Department of Information Technology (DOIT) stated they utilize ~three (3) independent contractors. These workers own one-person consulting firms and were selected through the County's competitive procurement process. Based on the IRS guidelines, explained on page 5 of this report and information extracted from inquiry, these workers are potentially misclassified based on the following elements: <ul style="list-style-type: none"> ○ Behavioral: The County has the right to direct and control the workers not only as to the results desired, but also as to the details, manner and means by which the results are accomplished. ○ Financial: The workers are paid regardless of performance and do not receive medical benefits, retirement plan benefits, or paid time off. DOIT supplies tools and equipment (computers) to the workers. DOIT is most likely the only entity receiving services from the workers. ○ Relationship: Full-time workers who do not have a target end date and fill critical positions within the department. <p>Per inquiry, DOIT does not maintain a list of contracted and temporary workers and their related information.</p> <p>DOIT also utilizes vendors to provide staff augmentation for ~38 workers/roles and some of these workers could be misclassified. Each worker would need to be evaluated based on the IRS guidelines to determine if they are appropriately classified. Per inquiry, DOIT states they are not able to offer competitive salaries for critical positions due to County compensation limits and must rely on contracting to fill critical roles within the organization.</p> <ul style="list-style-type: none"> • Police stated they utilize ~5 independent contractors to fill positions which require special skillsets within the department. These workers incur ~20 to 30 hours a week², do not receive benefits, and are appointed to one-year terms, but may stay in the same role for consecutive years. Based on our review, these workers may be misclassified, but additional review would need to occur to make a final determination. <p>Per inquiry, Police maintains a list of contracted workers and their work hours are approved by their applicable Supervisors.</p>

² IRS definition of full-time: An employee employed on average at least 30 hours of service per week, or 130 hours of service per month (<https://www.irs.gov/affordable-care-act/employers/identifying-full-time-employees>)



OBSERVATIONS MATRIX – CONTINUED

Observation	1. Independent Contractor Management and Monitoring – continued
	<p>Additional departments may also be utilizing independent contractors, and could be misclassifying them, but our procedures were limited to inquiry with five (5) large departments to determine if independent contractors are utilized and if a risk of misclassification is present.</p> <p>Violation of Virginia State Law and IRS standards may result in significant financial penalties³ various legal activities, and impact the County's reputation as an employer. Cases which have resulted in settlements and awards involve providing unpaid over-time wages, healthcare benefits (including reimbursing individuals for healthcare expenses incurred while classified as an independent contractor), 401(k) and retirement and pension benefits that were available to full time employees. The organization may also be held responsible for interest and penalties on the unpaid amounts of taxes.</p>
<p>Recommendation</p>	<ul style="list-style-type: none"> A. The County should review the identified potentially misclassified workers and determine if actions need to be taken to alter the relationship and related factors between the County and the worker(s). The County should ensure appropriate worker classification in compliance with IRS guidelines and Virginia State Employment Law. B. The County should consider implementing a process to address recruitment for certain critical technical positions within the organization. C. Implement a process to manage the classification of workers which identifies, records and reports independent contractors for all departments within the County. This process should include: <ul style="list-style-type: none"> 1. Establish comprehensive procedures for supplemental staffing which includes definitions and requirements for the use of independent contractors. 2. Provide training to all departments to establish a clear understanding how workers are classified according to state and federal regulations and why it is important to adhere to regulatory requirements. 3. When a department determines the need for contracted workers, Human Resources should review the factors / justification and provide recommendations for all independent contractors prior to beginning the procurement process. Evidence of review and recommendation should be retained. 4. Human Resources should report all independent contractors to the Commonwealth as required. 5. Departments should maintain a listing of all temporary and contracted workers including start date, scope of work (description), target end date, vendor name (if applicable), etc. Departments should monitor the contracted worker listing continuously to validate proper off-boarding / termination of workers and to identify potential worker misclassification. 6. Human Resources should maintain a listing of all independent contractors including relevant information (department, start date, etc.). 7. Departments should report all changes in independent contractors to Human Resources on an on-going basis. 8. Quarterly, Human Resources should collaborate with departments to validate whether the independent contractor listing is accurate and justified.

³ Recent cases related to independent misclassification have resulted in settlements or legal restitution amounting to \$100K, \$13.3M, and \$18M.



OBSERVATIONS MATRIX – CONTINUED

Observation	2. Independent Contractor Management and Monitoring – continued
Management's Action Plan	<p>Response: Management concurs with the observation. To effectively implement the recommended procedures, one new FTE will be needed in the Human Resources Department. All independent contractors will be reassessed during the applicable contract renewal period(s).</p> <p>Responsible Party: Human Resources Department / Finance Department.</p> <p>Estimation Completion Date: TBD dependent upon allocation of an additional FTE resource.</p>



EXHIBIT A – BACKGROUND RELATED TO VA CODE § 40.1-28.7:7, § 58.1-1900, AND HOUSE BILL 1407

Some employers in Virginia expressed concern about the unfair competitive advantage gained by other employers who misclassify workers. Misclassifying workers can lower costs to the employer by up to forty percent. The IRS, Commonwealth of Virginia and U.S. Government Accountability Office (“GAO”) found that misclassification can impact government revenues as well as employers and workers.

Employers who properly classify workers pay higher payroll costs and may be less competitive in their respective industries. Misclassified workers are often denied certain legal rights and benefits.

A Virginia Employment Commission (“VEC”) audit of one percent of Virginia employers found 5,639 workers were misclassified. Based on estimates in other states, Virginia could have on the order of 40,000 employers who misclassify employees and 214,000 misclassified workers.

Worker misclassification lowers Virginia’s state income tax collections, leading to estimated foregone revenues of approximately \$28 million for workers identified during VEC audits.

Based on the findings from the VEC, the governor of Virginia established an Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud. The Taskforce included representatives from several state agencies, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, and the Office of the Attorney General. The governor’s Taskforce released its report in November 2019 that criticized the use of independent contractor arrangements, stating that independent contractor misclassification “creates a competitive disadvantage for Virginia businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenue, and prevents workers from receiving protections and benefits to which they legally are entitled.”

As a result of the legislative study in 2012 and the findings and recommendations from the Inter-Agency Taskforce several new laws relating to misclassification have been enacted. The new laws will likely lead to additional litigation and penalties on organizations unable to support the classification of workers as independent contractors.

- I. Virginia Code § 40.1-28.7:7, became effective July 1, 2020. This law creates a private cause of action against employers for misclassifying a worker as an independent contractor. It also creates a presumption that a worker who performs services for compensation is an employee, rather than a contractor. The payer/employer has the burden of proving that the worker is properly classified as a contractor based on the Internal Revenue Service guidelines. If the worker’s claim of misclassification is successful, the employee is entitled to any past wages or salaries, employment benefits (including any expenses that the worker paid out of pocket that would have been covered by insurance had the worker been properly classified), and any other compensation lost due to the misclassification, as well as attorney’s fees and costs for bringing the action.



EXHIBIT A – BACKGROUND RELATED TO VA CODE § 40.1-28.7:7, § 58.1-1900, AND HOUSE BILL 1407 – CONTINUED

- II. Additionally, House Bill 1407, took effect January 1, 2021 and creates a new state law that prohibits employers from misclassifying employees as independent contractors and allows the Virginia Department of Taxation to investigate and impose civil penalties against employers. The civil penalty may be up to \$1,000 per misclassified individual for the first offense, up to \$2,500 per misclassified individual for the second offense and up to \$5,000 per misclassified individual for subsequent offenses. No one may require or ask an employee to enter into an agreement or sign a document that misclassifies the employee as an independent contractor.

An independent contractor arrangement doesn't make the relationship legal simply because the parties agree. If the person performing the work is an employee under the IRS guidelines, the individual must be an employee for all legal purposes and the parties cannot agree otherwise.

- III. Virginia Code § 58.1-1900 through 1905 provides that the "worker" presumption applies for the purposes of:
- Taxation (Title 58),
 - Labor and employment (such as payment of wages) (Title 40.1),
 - Unemployment (Title 60.2) and
 - Worker's compensation (Title 65.2).

Employers will be required to pay the designated taxes unless the employer demonstrates to the Department of Taxation's satisfaction that their 1099-designated workers qualify under the IRS guidelines as an independent contractor.

Additionally, the new laws authorize the Department of General Services, The Virginia Employment Commission, the Tax Commissioner, the Department of Labor and Industry, the Department of Professional and Occupational Regulation and the Workers' Compensation Commission to share information received regarding worker misclassification which could also result in a referral to the Virginia Department of Labor and Industry for comparable investigation. This increases the risk the governing agencies could identify misclassified workers and impose fines and penalties.



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