

## Department of Labor Continues To Crack Down On The Misclassification Of Workers While The IRS Creates An Incentive To Help Employers Reclassify Workers

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Continuing the Department of Labor's initiatives on the misclassification of employees as independent contractors, Secretary of Labor Hilda L. Solis signed a memorandum of understanding with the Internal Revenue Service on September 19, 2011, that enables the U.S. Department of Labor to share information and coordinate law enforcement with the IRS and various states to "end the practice of misclassifying employees."

In a separate announcement, as an incentive to help employers correct any erroneous classifications before being caught, the IRS has created a program aimed at helping employers reclassify workers with only nominal penalties. The program requires employers to agree to prospectively treat the class of workers as employees for future tax periods. But, in exchange, the IRS will agree to:

1. Require the employer to only pay 10% of the employment tax liability that may have been due to the workers for the most recent tax year;
2. Exempt the employer from liability for any interest and penalties on the liability;
3. Forgo an employment tax audit for the worker classification of the workers for prior years; and
4. Extend the limitations period on assessment of employment taxes for three years for the first, second, and third calendar years after the date the taxpayer agreed to begin treating the workers as employees. To be eligible for this new reclassification incentive, employers must have consistently treated the workers as non-employees; filed required Form 1099s for the workers for the previous 3 years; and cannot be undergoing an IRS audit.