

Transport Topics **Online**

Updated:

IRS, Labor Dept. to Crack Down on Firms Misclassifying Workers

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The Obama administration said it plans to begin a multimillion-dollar push to crack down on employers who misclassify employees as independent contractors.

The administration's new enforcement effort, announced last month in a series of budget briefings, calls for the creation of a joint [Department of Labor](#) and [Internal Revenue Service](#) task force to identify and audit employers who avoid paying taxes.

The proposal calls for \$25 million to target misclassification with 100 enforcement personnel and competitive grants to boost states' incentives and capacity to address the problem, according to documents contained in the administration's fiscal year 2011 proposed budget.

The new effort will "dramatically strengthen and coordinate federal and state efforts to address employer misclassification of workers," Jane Oates, assistant secretary of the Labor Department's employment and training administration, said at a recent news conference.

Nancy Leppink, deputy administrator for the department's wage and hour division, said, "Misclassification of employees as independent contractors results in violations of any number of federal and state employment benefit and protection laws, and state and federal tax laws, including minimum wage and overtime violations."

The Labor Department estimated that the crackdown will increase federal tax receipts by more than \$7 billion over 10 years.

Brandon Borgna, a spokesman for [American Trucking Associations](#), said it's too soon to assess the potential effect the effort might have on motor carriers.

"This is really more about all businesses," Borgna said. "It's not specifically targeting trucking."

However, last year ATA joined an industry lobbying group to ensure that proposed legislation did not harm the viability of the independent contractor business model. The use of independent contractors as drivers is common in the trucking industry.

In 2009, bills were introduced in the House and Senate aimed at toughening standards for employers using independent contractors.

Neither bill has advanced to a vote.

Sen. John Kerry (D-Mass.), a sponsor of the Senate independent contractor bill, said that under current law, employers are required to take certain actions on behalf of their employees, including withholding income taxes, paying Social Security and

Medicare taxes, paying for unemployment insurance, and providing a safe and nondiscriminatory workplace.

“Employers are not required to undertake these obligations for independent contractors,” Kerry said in a speech in December. “When workers are misclassified, businesses that play by the rules lose business to competitors that do not play by the rules, and workers lose valuable rights and protections.”

Although it’s unclear how many workers are misclassified, a 2009 study by the [Government Accountability Office](#) said that as many as 30% of employers audited in nine states during 2000 misclassified at least some of their workers.

During tax year 1983, for example, IRS estimated that U.S. employers misclassified a total of 3.4 million employees, resulting in an estimated revenue loss of \$1.6 billion in 1984 dollars.

The GAO study said that IRS faces challenges with its compliance efforts because of resource constraints and limits that the tax law places on its classification enforcement.

“DOL and IRS typically do not exchange the information they collect on misclassification, in part because of certain restrictions in the tax code on IRS’ ability to share tax information with federal agencies,” the GAO study said.

GAO also said that few states collaborate with the Labor Department to address misclassification.

However, IRS and 34 states share information on misclassification-related audits, as permitted under the tax code.

“Generally, IRS and states have found collaboration to be helpful, although some states believe information sharing practices could be improved,” the GAO said.

The GAO study said that in the past, the Labor Department’s detection of misclassification generally resulted from its investigations of alleged violations of federal labor law or many complaints of nonpayment of overtime or minimum wages.

In the past, IRS generally has enforced worker classification compliance primarily through examinations of employers, but the agency also offers settlements through which eligible employers under examination can reduce taxes they might owe if they maintain proper classification of their workers in the future, according to GAO.