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## **Subject: EMPLOYEE OR CONTRACTOR ? - - TROUBLES BREWING!**

**Disputes over the classification of a worker as an employee or independent contractor (self-employed) have had significant tax consequences for decades. It appears that a “perfect storm” of factors is brewing which could really turn up the heat in this already messy area. Consider:**

- ✓ A recent IRS study concluded that about 15% of employers misclassified 3.4 million workers as independent contractors rather than as employees;
- ✓ Democratic Congressman Jim McDermott introduced legislation (H.R. 3408) on July 30, 2009 which would create a new tax code section containing new worker classification rules, a narrowing of “reasonable basis” justification for misclassification of workers, and substantial increases in penalties for misclassification of workers. The penalty increases are staggering - - a \$3 million penalty for “intentional disregard”, million dollar fines for other actions, etc. H.R. 3408 also would require information reporting of payments made to companies (1099’s now are only issued to people, not companies); and
- ✓ President Obama’s administration favors an increasingly aggressive stance in the worker classification area. As a senator in 2007, now President Obama sponsored a bill to update procedures for classification of workers, with a “bent” towards more employees and less independent contractors --- resulting in increased union membership and rigorous enforcement of wage and hour laws.

## **CONCLUSION**

Every employer should review its current classification of workers it pays for services. If you pay people “off the payroll” and “1099 them”, you must have a strong foundation of evidential support for your independent contractor position.

The IRS website has excellent current information on its website, with an article called “Independent Contractor or Employee”. We recommend that every employer review this information, which can be found at the following:

Go to [www.irs.gov](http://www.irs.gov)

Click on “Businesses” tab

Click on “Small Business/Self Employed” tab

**AccuPay’s staff of Certified Payroll Professionals (CPP’s) and CPA/advisors would be pleased to provide our insights and answer your “worker classification” questions. Simply call us at 317-885-7600 or toll free at 877-885-2228(accur).**

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