

MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS

LIABILITIES

Willful misclassification is defined as voluntarily and knowingly misclassifying an employee as an independent contractor. Pursuant to Labor Code section 226.8, subdivision (a)(1), it is unlawful for an employer to willfully misclassify an individual as an independent contractor.

CIVIL PENALTIES UNDER LABOR CODE SECTION 226.8:

Willful misclassification of an individual as an independent contractor

\$5,000 to \$15,000

per violation, in addition to other penalties

Willful misclassification of an individual as an independent contractor **and** pattern of willful misclassifications

\$10,000 to \$25,000

per violation, in addition to other penalties

OTHER WAGES, TAXES, FINES, & PENALTIES:

Companies who misclassify their workers may be found liable for additional wages, taxes, penalties, and fines that can add up to **significant financial liability**. These include, but are not limited to:

- Unpaid Federal, State, and Local Income Taxes
- IRS Code Penalties
- FICA (Social Security) and Medicare Contributions
- Unpaid Minimum Wages and Overtime Wages
- Meal and Rest Period Liability

Maximum of 2 hours of premium pay per day

- Unpaid Work-Related Expenses
- Unpaid Paid Sick Leave

Maximum of \$4,000

- Failure to Provide Accurate Itemized Wage Statements

**\$50 for initial/\$100 per subsequent violation
Maximum of \$4,000 per employee**

- Waiting Time Penalties

Maximum of 30 days of wages

- Unpaid Vacation Pay
- Unpaid Workers' Compensation Premiums
- Prejudgment Interest
- Claimant's Attorney Fees
- Joint Liability

Disclaimer: Please use caution when referencing this resource. We do not intend the information above to be legal advice or replace consultation with counsel when determining how to classify your workers. By providing this information, we are not acting as your lawyer. If you need legal advice you are welcome to contact us or we recommend that you speak to your legal counsel before relying on this information. Hackler Flynn & Associates is only licensed to practice in California.