



OCTOBER 2010

### **WORKER MISCLASSIFICATION**

Several bills to stop worker misclassification have been introduced in the 111th Congress, (H.R. 6128), along with a Senate companion measure (S. 3786) would end the moratorium on Internal Revenue Service guidance addressing worker classification and require the Treasury Department to issue prospective guidance clarifying the employment status of individuals for federal employment tax purposes.

The proposed Fair Playing Act would eliminate the ability of firms to qualify for reduced penalties for failure to deduct and withhold income taxes and the employees' share of payroll taxes if they cannot show there was a reasonable basis for misclassifying the worker.

Anyone that contracts with independent contractors on a regular and ongoing basis also would be required to provide a written statement to each independent contractor of the federal tax obligations of independent contractors, the labor and employment law protections that do not apply to independent contractors, and the right of the independent contractor to seek a status determination from the IRS.

The other bill, the Employee Misclassification Prevention Act (H.R. 5107), would help prevent employee misclassification by requiring employers to keep records on and notify workers of their employment or independent contractor classification and their right to challenge that classification.

National Finishing Contractors Association supports this legislation.

### **SMALL BUSINESS JOBS ACT EXPANDS INFORMATIONAL REQUIREMENTS AND INCREASES PENALTIES FOR FAILURE TO FILE**

On September 27, President Obama signed into law legislation (H.R. 5297) that gives small businesses \$12 billion in tax breaks beginning this year. The bill also establishes a \$30 billion Small Business Lending Fund.

The new law increases penalties for failure to file Form 1099 reports with the Internal Revenue Service. The National Finishing Contractors Association along with a number of organizations and coalitions, are seeking full repeal of the new Form 1099 reporting requirements enacted earlier this year as part of the landmark Patient Protection and Affordable Care Act. Those new requirements, scheduled to take effect in 2012, will force all businesses and tax-exempt organizations to issue a Form 1099 to vendors from whom they buy goods totaling \$600 or more annually.

Additionally, the bill requires persons receiving rental income from real property to file information returns to the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses. In general, there is an exception for individuals renting their principal residences, including active members of the military, from the reporting requirements.

### **FINANCIAL ACCOUNTING STANDARDS BOARD (FASB)**

In a proposed accounting standards update issued September 1, FASB indicated that it intends to require footnote disclosures about each multiemployer plan in which an employer materially participates. The new disclosure standards would apply to all non-governmental entities that participate in multiemployer plans.

National FCA filed comments with FASB, expressing concern that the proposed rules would produce misleading information to users of financial statements, while at the same time undermine the fiscal perception of sponsoring employers and their construction industry multiemployer pension plans.

The new accounting standards would require new disclosures by employers participating in multiemployer pension and other postretirement benefit plans. The proposal calls for entities that participate in multiemployer plans to provide information on liabilities the company would face in case of withdrawal from a plan. However, the only way a contractor would withdraw from the plan is by either turning non-union or negotiating out of the CBA. In both cases, the contractor makes a decision and controls his or her own destiny.

Under FASB's proposed disclosure, employers would need to collect withdrawal liability estimates from plan administrators. Because many multiemployer plans have hundreds, even thousands of participating employers, requests for withdrawal liability estimates could become a considerable administrative burden on multiemployer plans.

#### **EPA'S RENOVATION, REPAIR, AND PAINTING REGULATION NOW ENFORCED**

As of Friday October 1, the EPA's new Renovation, Repair, and Painting (RRP) rule that took effect this past April will now be enforced. The new regulation covers work performed on homes, schools, and daycare centers built before 1978 and is in place to protect against lead paint.

Failure to comply with the new regulations could result in a whopping \$37,500 fine.

If you missed the announcement on the RRP rule, take a look at the EPA website (<http://www.epa.gov/lead/pubs/renovation.htm>) for the new regulation.

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