

## EMPLOYMENT, LABOR & BENEFITS LEGAL UPDATE



*In this Legal Update*

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A new law will take effect January 1, 2011, that increases the enforcement authority of the Wisconsin Department of Workforce Development (the “DWD”) related to the classification of workers as either employees or independent contractors. The law affects employers and employees as each are defined pursuant to the Wisconsin employment regulations, minimum wage law, workers’ compensation law, and unemployment insurance law.

#### What Are Employers Required To Do Under The New Law?

The newly created Wis. Stat. section 103.06 empowers the DWD to require an employer to prove that the employer has:

- Maintained records identifying all persons performing work for the employer, including name, address, and social security number of each of these persons;
- Maintained required workers’ compensation coverage for its employees;
- Provided to the DWD required information for the state’s hiring reporting system;
- Maintained records of hours worked by its employees, wages paid to these employees, deductions from wages, and other required information under the state wage and hour laws; and
- Complied with the state unemployment insurance law.

#### What Is the DWD required to do?

In order to ensure worker classification compliance, section 103.06(2) requires that the DWD:

- Educate employers, employees, nonemployees, and the public about the proper classification of persons performing services;
- Receive and investigate complaints alleging classification violations and investigate alleged violations on its own initiative;
- Order employers in violation of the classification requirements to stop work and

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pay a forfeiture;

- Refer complaints of misclassification to other state or local agencies that administer laws regarding the proper classification of employees;
- Cooperate with other agencies in the investigation and enforcement of laws that depend on the proper classification of employees; and
- Appoint attorneys as appeal tribunals to conduct hearings and issue decisions.

#### DWD Investigations and Stop-Work Orders:

As part of its investigation, the DWD may under section 103.06(4):

- Enter and inspect any place of business or employment and copy required records or other records related to worker classification compliance;
- Determine the identity and activities of any person performing work at any location where work was performed; and
- Interview and obtain written statements from any person performing work or present at any work location regarding the names and addresses of workers, hours worked by workers, wages paid to these workers, and any other information regarding the remuneration of these workers and the nature and extent of services performed by these workers.

The DWD may issue a notice of intent to issue a stop-work order if an employer has not complied with the worker classification requirements. The employer then will have three days to provide the necessary information to prove compliance before the stop-work order will be issued. Once the order is issued, an employer that violates the order may be assessed a forfeiture of \$1,250 for each day of violation.

#### What Employers Need to Know:

The DWD has been given increased authority to investigate worker misclassification compliance among employers. Employers should act now to conduct internal audits and confirm whether workers are properly classified as “employees” or “independent contractors” to avoid stop-work orders and fines under the new law.

Please feel free to contact Sara Ackermann or Kyle Flanagan, the authors of this article, or any of the attorneys in the Employment, Labor & Benefits Practice Group of Ruder Ware: Ron Rutlin, Dean Dietrich, Jeff Jones, Mary Ellen Schill or Chris Toner, in the Wausau office (715.845.4336), or Shawn Rauckman in the Eau Claire office (715.834.3425) if you have any questions in regard to the new requirements.

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## ABOUT RUDER WARE'S EMPLOYMENT, LABOR & BENEFITS GROUP

Ruder Ware's Employment, Labor & Benefits practice group works in tandem with private and public employers providing counsel on all aspects of human resource management. The breadth of services offered, unique for a law firm headquartered in Wausau, Wisconsin, includes counsel on highly sensitive issues such as workplace harassment, employee privacy, drug and alcohol testing, and disciplinary issues. In addition, attorneys design and assist with the development, implementation, and enforcement of policies and procedures relating to benefits, hiring practices, employee handbooks, state and federal discrimination laws, FMLA, FLSA, ADA, OSHA, and workers' compensation.

Attorneys in the group regularly represent public and private sector employers in collective bargaining, negotiations, union elections, unfair labor practices, and grievance arbitration matters in addition to guiding nonunion clients on maintaining their union-free status.

Actively involved in organizations with human resource professionals as the primary member base, our attorneys are in tune with the various sensitivities and complexities of the profession. Our attorneys often present seminars and in-house training on employment law topics both across the state and nationwide.

Areas of practice by the Employment, Labor & Benefits practice group:

- Employee Benefits & Executive Compensation
- Employment Law
- Labor Law

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**Ruder Ware**

As part of a full-service law firm, our attorneys provide clients with a one-stop approach to their legal needs. Ruder Ware, the largest Wisconsin law firm headquartered north of Madison, also provides legal counsel in Business Transactions; Litigation & Dispute Resolution; and Trusts & Estates.