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## **Independent Contractor or Employee? The Mistake Can be Costly Under the New Illinois Employee Classification Act**

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On January 1, 2008, the Employee Classification Act was enacted in Illinois in order to address the practice of misclassifying employees as independent contractors. The Act seeks to penalize and punish any individual or entity that misclassifies any worker as an independent contractor on construction related projects. The Act is intended to be all encompassing and includes construction or construction related companies including some trucking companies. Pursuant to the Act, an individual performing services for a contractor is deemed to be an employee of the contractor rather than an independent contractor unless certain criteria is met. This criterion requires that: (1) the individual has been and will continue to be free from control or direction over the performance of the service for the contractor; (2) the service performed by the individual is outside the usual course of services performed by the contractor; and (3) the individual is engaged in an independently established trade, occupation, profession or business. The Act provides an exemption if an individual is deemed a legitimate sole proprietor or partnership.

The Illinois Department of Labor (IDOL) will administer and enforce the Act. Violations of the Act include civil penalties and if a willful violation is established, punitive damages and criminal penalties can be imposed. In addition to enforcement by the IDOL any individual or interested third party can file a private right of action in circuit court and seek damages and injunctive relief. Any person whose rights have been violated under the Act can recover any unpaid wages, overtime, employment benefits; liquidated damages; compensatory damages of up to \$500 for each violation; and attorneys' fees and costs. Based on these significant penalties, construction contractors who rely on subcontractors should become well versed this Act to be certain that the subcontractor is truly an independent contractor. Also, any worker improperly classified as an independent contractor may seek the remedies provided under the Act. For further information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*\*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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