



Michigan Employers Act Before The Payroll Fraud Enforcement Unit Comes Knocking

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Michigan employers who retain independent contractors are beginning to find themselves under scrutiny from the attorney general's newly established Payroll Fraud Enforcement Unit.

Michigan Attorney General Dana Nessel created the Payroll Fraud Enforcement Unit in April 2019 to focus primarily on the misclassification of employees as self-employed independent contractors. The attorney general asserts that Michigan employers have improperly used this approach to avoid paying overtime, health benefits, unemployment, and worker's compensation, along with payroll taxes. The attorney general asserts that Michigan businesses "stole" and "robbed" \$429 million in wages and overtime pay between 2013 and 2015.

So far, the Payroll Fraud Enforcement Unit has received nearly 100 complaints through its tip line and website. Employers who have had such a complaint filed against them are required to respond with three years of payroll data (for all staff) and answer a 43-point questionnaire – [see this sample](#). The attorney general states that the unit has responded to each complaint it received, working closely with the U.S. Department of Labor, the Internal Revenue Service, the Michigan Department of Treasury, and the state's Wage and Hour Bureau and its Unemployment Insurance Agency.

Michigan employers would be smart to undertake a critical risk/benefit analysis of all existing ongoing independent contractor relationships to make

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sure that they meet all of the requirements of applicable state and federal law. It is best practice for this review to take place under the protection of attorney-client privilege to examine whether the independent contractor determinations are supportable – particularly when the workers have an ongoing business relationship with the employer and receive a majority of their income from it.

Employers who get caught misclassifying workers as independent contractors face significant potential liability for claims such as workers' compensation with no insurance in place and back taxes with associated penalties.