

## **Representative Engagements Since 2010**

Engagements are divided into (a) independent contractor “compliance” projects, and (b) defense of independent contractor “misclassification” lawsuits and administrative proceedings, for over 140 independent contractor clients in [diverse industries](#).

### **INDEPENDENT CONTRACTOR COMPLIANCE PROJECTS**

• Restructuring, re-documenting, and re-implementing independent contractor relationships for over 90 clients including updating and adding state-of-the-art provisions to independent contractor agreements in order to enhance compliance with state and federal independent contractor laws between:

- » A travel services host agency operating in all 50 states and independent travel advisors
- » A nationwide insurance adjusting company and independent claims adjusters
- » A beef jerky company and independent distributors
- » A regional roofing company and independent direct sellers soliciting sales from homeowners suffering roof damage in severe weather
- » A regional roofing company and independent contractor roofing contractors
- » An insurance broker company and commissioned insurance brokers
- » A nationwide service of process company and independent servers
- » A local delivery service in Minneapolis and independent couriers
- » A nationwide home renovation company and independent home renovators
- » A worldwide electrical manufacturing company and contract laborers
- » A nationwide peak fitness company and independent trainers
- » An on-demand specialty delivery company and independent couriers
- » A global medical device company and independent clinical consulting trainers
- » A meditation organization and independent instructors
- » A food and beverage distribution company operating in 15 or more Eastern and Midwest states and independent route salesmen, distributors, and independent transportation / trucking contractors
- » A language services company and its network of independent interpreters and translators in all 50 states and the District of Columbia
- » A global corporate travel services provider and independent meeting and events sales specialists
- » A large student tour sponsor and independent tour directors

- » A nationwide music teaching referral company and independent music instructors in the largest U.S. metropolitan areas
- » An investor in depressed homes that flip properties and real estate sales agents
- » A New York frozen food distributor and independent delivery drivers, consistent with New York's Commercial Goods Transportation Industry Fair Play Act
- » A distributor of gun silencers in Texas and product salespersons
- » A New York advertising / commercials company and independent video production personnel
- » A number of nationwide real estate sales companies and independent real estate agents providing services regulated by state and federal laws
- » A fashion industry company and independent designers, models, and consultants
- » Military government contractor and independent international security providers
- » A large government contractor and freelance national security document reviewers
- » Publishing/communications companies and independent editors, copywriters and freelancers
- » A tutoring referral service company that began on the West Coast and independent tutors in more than two dozen states
- » a travel services agency operating in more than 40 states and independent travel affiliates
- » A nationwide direct sellers of household products and independent sales associates
- » An amateur athletic organization and independent coaches and trainers
- » A family ranch operating in Texas and Kentucky and ranch hands
- » A court reporting service and independent certified court reporters
- » A New Jersey-based global pharmaceutical company and independent scientists and medical experts
- » A company investing in low-value homes and renovation consultants
- » A talent advisory firm and consultants
- » a pharmaceutical company and selected members of its legal staff
- » A physical therapist referral company and independent licensed health professionals
- » Two medical facilities/doctors' offices and independent physicians, nurses and medical technicians
- » Florida and Michigan internet sales businesses and independent telephone sales consultants
- » A nationwide au pair agency and local childcare consultants
- » Two massage therapy companies and independent massage therapists

- » A nationwide baked goods food products manufacturer and multi-route distributors
- » An automobile repair company and independent salespersons selling hail damage repairs
- » An information technology recruiting and sourcing companies and independent IT consultants, programmers and technicians
- » A multi-state food distribution business and independent drivers transporting food products to retail outlets
- » A company facilitating college hacking events and student coaches
- » An automobile marketing and promotion company and independent automobile demonstrators and lead generators who provide services at events in 60 U.S. cities
- » A marketing company and independent food and kitchen products demonstration specialists
- » A regional aquatic instructional company and independent occupational and physical therapists who provide services to children with autism
- » A nationwide direct sellers of beauty and cosmetics products and independent sales associates
- » A high school exchange program and international exchange coordinators
- » An automobile club and two truck and service technicians
- » A California dog walking and pet services company and independent dog walkers and pet sitters
- » A business dedicated to finding merger and acquisition candidates and their independent telemarketers and acquisition facilitators
- » A snack food products company operating in more than two dozen states and independent distributors
- » An air conditioning manufacturer and equipment salespersons
- » An accounting firm in Colorado and an accounting firm in New York and independent accountants and CPAs
- » A regional snack food master distributor for a large snack food manufacturer with independent sub-distributors
- » A non-profit healthcare organization and consultants
- » A for-profit healthcare company and consultants
- » A musical rock band and independent band members
- » A Spanish-language radio station in Florida and independent radio hosts
- » The U.S. operation of a global information technology recruiter and independent Microsoft® computer programmers

- » New Jersey, California and Michigan janitorial companies and independent cleaning service providers
  - » A North Carolina product certification company and quality assurance specialists
  - » A regional ice cream distributor and independent drivers
  - » A security / guard company and off-duty police officers providing security services for retail customers
  - » A songwriting and music instructional company and independent instructors
  - » A New York beverage delivery company and independent distributors
  - » A California home cleaning referral service and independent house cleaners
  - » Two global education companies' online language school and U.S.-based independent language instructors
  - » A Microsoft® program and application staffing and recruitment company and independent experts on such computer apps and programs
  - » A nationwide courier company and independent couriers
  - » A home wealth office and home office personnel
  - » A restaurant cleaning service company and independent cleaning contractors
  - » A website sales services company and independent telephone salespersons
  - » An apartment house residential activities services company and activities consultants for residents
  - » A Massachusetts home inspection services company and independent inspectors
  - » Three local limousine and black car companies and their independent drivers
  - » A global talent advisory staffing firm and talent consultants
  - » A nationwide last mile logistics company and drivers providing delivery and white glove service
  - » A household products manufacturer and former executive of company acquired by client
- Preparing a decision matrix for an international staffing company, a nationwide staffing company, and a nationwide direct seller to maximize compliance in retaining independent contractors and to minimize exposure to state and federal independent contractor laws
  - Advising a municipal library on compliance with employment and tax laws that may impact its library researchers classified as independent contractors
  - Drafting an independent contractor agreement together with comprehensive independent contractor guidelines for a construction company to ensure subcontractor compliance with federal contractor wage laws as well as laws in Pennsylvania and other states regulating the use of independent contractors in the construction industry

- Advising an executive personnel staffing services company on enhancing independent contractor compliance with contract executives and financial consultants
- Advising a massage therapy company prior to beginning to operate on a “hybrid” business model, using both independent contractor and employee massage therapists, on maximizing compliance with independent contractor laws in view of decision by highest state court permitting hybrid operations in limited circumstances
- Advising a company in the insurance services industry operating with both independent contractors and employees how to maximize compliance with worker classification laws following an approved approach in a decision by a state’s highest court on such “hybrid” business model
- Examining independent contractor laws in two dozen states for a California tutoring referral company seeking to expand its operations, which are structured on an independent contractor model, into jurisdictions with laws favorable to businesses making legitimate use of independent contractors
- Drafting best practices and other internal communications and materials for clients consistent with their structured or restructured independent contractor relationships
- Conducting a 50-state review of wage and hour, unemployment and workers’ compensation laws for an insurance company seeking to expand its independent insurance agency business channel
- Advising a staffing company seeking to onboard independent contractors from government contractors as to how to enhance independent contractor compliance
- Advising a number of food manufacturing companies on compliance with franchise protection and dealer / distributor laws that may apply to independent distributors
- Advising a household goods company on how to structure independent contractor relationships when creating a direct selling division intending to use independent sales associates
- Assessing whether a transportation company has any benefit plan liability as a result of using independent contractor service providers over a prolonged period of time
- Advising a privately-held cosmetics company on retaining family executives engaged as independent contractors
- Advising a nationwide insurance company on compliance with Fair Credit Reporting Act (FCRA) provisions applicable to criminal history and credit background checks for independent contractors
- Advising an in-home tutoring referral company on compliance with FCRA for independent tutors entering customer homes and drafting language in contractor agreements to maximize compliance with FCRA
- Drafting for an in-home tutoring referral company terms of service for customers and third party sponsors of tutoring by independent tutors to minimize any independent contractor misclassification exposure

- Advising a “hybrid” pool service company operating with affiliates, some of which classified pool cleaners and pool service mechanics as independent contractor compliance and some of which classified such personnel as employees, how to maximize worker classification compliance
- Advising a nationwide fitness training company operating on a franchise model with individual trainers on enhancing compliance with independent contractor laws
- Advising an amusement park service company on maximizing compliance with service technicians repairing rides and game machines
- Advising a home renovation company operating on a franchise business model with individual renovation consultants on enhancing compliance with independent contractor laws
- Advising two educational technology companies on enhancing compliance in regard to independent editors
- Advising clients in selected industries on lobbying state legislatures regarding independent contractor bills
- Advising numerous companies operating in California how to comply with Dynamex, AB5 and AB2257
- Drafting breach, cure and termination notices for clients in response to independent contractors’ breaches of their contractor agreements
- Analyzing employee benefit plan documentation for several clients to determine if the eligibility provisions effectively “carve out” groups of independent contractors if they are re-characterized as common law employees, determining if the exclusion of contractors impacts nondiscrimination testing requirements under ERISA, and revising employee benefit plan and corporate resolution language accordingly
- Creating continuing education and management training programs for multiple companies using independent contractors
- Creating independent contractor policies for internal personnel to carry out in interactions with contractors for various clients utilizing and independent contractor business model
- Updating and enhancing websites and marketing material of multiple businesses that use independent contractors to ensure language used is consistent with independent nature of contractors
- Assisting clients in various industries in voluntarily reclassifying workers previously treated as independent contractors or redistributing such workers through the use of companies offering workforce solutions, staffing, and contingent and temp agency workers

- Advising clients that are contemplating independent contractor relationships that would not comply with state and federal tax and labor laws to classify new workers as employees or engage a workplace staffing company to hire its projected employees

## **INDEPENDENT CONTRACTOR MISCLASSIFICATION LITIGATION**

(These engagements are separate and distinct from our defense of lawsuits and administrative proceedings alleging misclassification of employees as exempt from overtime or minimum wage.)

### ***Lawsuits (Individual and Class Actions)***

- Defending an alcohol delivery company in three California class action lawsuits alleging the couriers it used were misclassified as independent contractors and were not paid overtime, minimum wage and other statutory wage benefits in violation of California Labor Code and Private Attorney Generals Act (PAGA) claims, following the filing of a motion to compel arbitration in initial lawsuit
- Defending a black car service company in New York in a putative class/collective action lawsuit alleging misclassification of drivers as independent contractors
- Defending a snack food company in a putative class action lawsuit in Massachusetts by a distributor claiming to be an employee-driver/delivery person misclassified as an independent contractor and securing a judgment in favor of the company
- Defending regional ice cream distributor in threatened class action under New York and federal law for alleged independent contractor misclassification of distributors
- Defending a lawsuit for breach of the Massachusetts independent contractor laws by an executive paid on a 1099 basis by a software and media company
- Defending large ethnic baked foods company in lawsuit by distributor and helper claiming they were misclassified as independent contractors and denied rights under federal and state wage and state franchise law, and securing order compelling arbitration
- Defending independent contractor misclassification class and collective action lawsuit by entertainers against children's entertainment company alleging violations of federal and state wage and hour laws and state wage notice and paystub laws
- Defending insurance company in lawsuit by insurance agent in New Jersey alleging violations of the state wage payment law, breach of contract, and breach of the implied covenant of good faith and fair dealing
- Defending nationwide insurance services company as special independent contractor counsel in class action and PAGA claims in California by insurance service representatives, settling PAGA claim on modest terms and obtaining dismissal of class action lawsuit
- Defending an au pair sponsor in a putative collective/class action alleging local childcare consultants are misclassified as independent contractors and not paid minimum wages, provided with rest breaks or reimbursed for expenses
- Serving as special independent contractor counsel and obtaining summary judgment in favor of au pair agency in misclassification class and collective action lawsuit by local childcare consultants
- Defending large ethnic baked foods company in lawsuits by three distributors claiming they were misclassified as independent contractors, compelling arbitration

- Defending a large snack food company in a wage and hour lawsuit in Massachusetts by an independent distributor and compelling arbitration of lawsuit
- Defending a large snack food company in a breach of contract lawsuit in Virginia by an independent master distributor and enforcing dismissal of lawsuit
- Defending a nationwide snack food company alleged to be a joint employer in a federal court lawsuit in New York by an employee of an independent distributor seeking payment for unpaid wages, resulting in a withdrawal of the lawsuit
- Defending a large snack food company in a franchise practices act lawsuit by an independent distributor in Arkansas and obtaining dismissal on summary judgment
- Defending a patient transportation company in enforcement action in court by New Jersey Attorney General's Office pertaining to drivers that were subsequently re-classified as employees
- Representing a Pacific Northwest adult entertainment club in response to a threatened class action lawsuit by exotic dancers claiming they were employees and not independent contractors
- Defending a snack food company in a workers compensation lawsuit in Louisiana by a distributor claiming he was misclassified as an independent contractor
- Defending an ethnic foods distribution company in Florida in a workers compensation lawsuit by an employee of an independent contractor transportation provider
- Defending multiple personal injury cases in Delaware, Louisiana, New Jersey, New York, Georgia, Pennsylvania, and Rhode Island brought against a large snack food company due to injuries allegedly caused by independent contractor distributors, and securing the client's dismissal on the basis of the independent contractor relationship with the distributor
- Commencing a lawsuit in New York seeking a declaratory judgment that a service provider claiming to be a common law employee was an independent contractor in response to the service provider's threatened tax proceedings in a foreign jurisdiction
- Consulting with a nationwide electrical contracting company in a lawsuit brought by the Attorney General of the District of Columbia regarding joint employer status of workers employed by independent labor contractors and drafting labor contractor guidelines to minimize misclassification liability and promote favorable settlement of case
- Defending a personal injury case New Jersey brought against a regional snack food company due to injuries allegedly caused by independent contractor distributor, and securing summary judgment in favor of the client on the basis of the independent contractor relationship with the distributor

### ***Due Diligence***

- Conducting due diligence and assessing the potential for misclassification liability of companies that make extensive use of independent contractors for numerous private equity companies targeting such businesses for acquisition purposes
- Calculating the labor, employee benefit and tax liability of a nationwide company faced with multiple lawsuits and enforcement proceedings for a private equity client that was contemplating investment in the company

### ***Audits and Investigations by Government Agencies***

- Defending multi-state commercial restaurant cleaning service in U.S. Department of Labor investigation and audit of independent contractor status of commercial cleaners and obtaining determination from Labor Department that cleaners were classified properly under law
- Defending large security services company in audit by IRS of off-duty police officers classified as independent contractors with withdrawal by IRS of tax assessment and obtaining determination by IRS that officers were independent contractors
- Defending nationwide company providing services to insurance carriers in worker classification audit by IRS and obtaining ruling that client had properly classified contractors
- Defending a nationwide group fitness company in an IRS audit of independent contractor classification of trainers resulting in a determination that the trainers were properly classified
- Defending an OSHA retaliation investigation by the U.S. Labor Department against a snack food company alleging an independent distributor was an employee and not an independent contractor
- Defending a nationwide mergers and acquisition firm in an audit by the San Francisco regional office of the U.S. Labor Department investigating independent contractor misclassification
- Defending a nationwide interpreting and translating company in a comprehensive IRS employment tax audit
- Defending a snack food company in two discrimination and retaliation claims by an independent distributor investigated by a state fair employment act agency
- Defending a Puerto Rican security company in an overtime audit conducted by the U.S. Department of Labor
- Defending a company providing charter school substitute teachers in an IRS audit about the independent contractor status of the teachers
- Defending an educational company in an enforcement proceeding with the Massachusetts Attorney General's office regarding the classification of teachers for wage and hour and tax purposes
- Defending an information technology and computer programming company in an IRS SS-8 proceeding commenced by a computer programmer worker classified as independent contractor
- Defending an ethnic foods distributor in an investigation in Florida by U.S. immigration officials into citizenship of independent distributors
- Filing a formal protest of a government agency's failure to issue a procurement contract to a government contractor based on the independent contractor status of service providers
- Defending a fashion / clothing designer in a wage and hour investigation in New York focusing on alleged misclassification of independent fashion workers
- Defending national, regional, and local companies at unemployment, workers compensation, and disability benefits proceedings, including hearings by state governmental agencies where a claimant or regulatory agency has challenged the classification of one or more service providers as independent contractors and seeks benefits or an assessment of taxes and penalties for a claimant and similarly-situated workers filing benefit claims, including:
  - a therapist referral company in multiple unemployment compensation claims in New York by independent physical therapists and other providers who were referred to the company's clients

- a California courier company in its administrative proceeding before the California EDD (a state employment tax, unemployment, disability and pregnancy benefits agency) regarding the classification of professional couriers
- a California mental health management service company and independent therapy provider customers before the California EDD
- a nationwide last mile logistics company and drivers providing delivery and white glove service in an unemployment hearing in Texas
- nationwide real estate sales companies regarding real estate agents in unemployment proceedings in California, Wisconsin, Illinois, Pennsylvania, and New Jersey
- an amateur hockey sports organization in a challenge from a workers compensation board to the independent contractor designation of coaches
- an interpreting and translating company in its unemployment hearings in Alaska and New York (engaged as substitute counsel midway through hearing)
- a tutor referral business in multiple unemployment proceedings involving independent tutors in California, Colorado, Maryland, Michigan, Minnesota, Nevada, New York, Ohio, Georgia, Florida, Oregon, Pennsylvania, Texas, Washington and Wisconsin, and an unemployment hearing for such client in California resulting in the dismissal of the claim
- a local New York City tutoring and college test prep company and independent tutors and test prep advisors
- a nationwide peak fitness company in unemployment proceedings in Texas
- a company providing hail damage repairs to vehicles in an unemployment audit in Nevada regarding the independent contractor status of salespersons
- a Florida-based nationwide travel services company in unemployment, disability, and tax proceedings in Arizona, California, Georgia, Florida, Illinois, Massachusetts, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee and Washington, as well as unemployment hearings in Pennsylvania, Texas, and California related to independent travel affiliates
- a laundry services franchisor and dry cleaning and laundromat franchisees
- an insurance adjusting company in unemployment proceedings in California, Colorado, Louisiana, Minnesota, New Jersey, North Carolina, North Dakota, Ohio, South Carolina, Texas, Washington and Wisconsin
- a songwriting and music instructional company in unemployment proceedings in New York
- a food and beverage distributor in unemployment proceedings regarding drivers, sales agents and merchandisers in New York, New Jersey and Florida including obtaining rulings by an administrative law judge in one proceeding and by an appellate board in another proceeding that sales agents were independent contractors
- a small snack food company in an unemployment hearing in Pennsylvania by an independent distributor
- a Connecticut tutoring referral company, engaged as substitute counsel following hearing in matter, in the appeal of an unemployment determination regarding the status of tutors who were referred to company clients
- a New York cultural and human rights training company in an unemployment insurance investigation of its classification of counselors and trainers as independent contractors

- a Texas information technology company in a New York unemployment hearing regarding the status of a software consultant
- a nationwide court reporting service in a state unemployment audit in New Jersey regarding its use of independent court reporters
- a fashion and sourcing company in unemployment claims in New York by independent fashion / design models and consultants
- an educational company and its affiliates in unemployment proceedings in Florida, New Hampshire, Oregon, New Hampshire, and Wisconsin
- a New York massage therapy company in an unemployment hearing in New York dismissing the Commissioner's claim that massage therapists were employees, following the restructuring and re-documentation of company's independent contractor relationship after an earlier adverse determination by the agency
- a West Virginia property title search company in workers compensation and unemployment audits of landmen engaged as independent contractors
- a California online news site that reports on nonprofits in a New York Department of Labor audit of writers and in New York who were treated as independent contractors
- a museum tour company in a workers' compensation audit of independent contractors
- a music instruction referral company in an appeal of a New York unemployment decision regarding independent music teachers (engaged as substituted counsel after hearing and initial determination)
- an aquatic instructional company in unemployment audits regarding the use of independent contractors to teach swimming to children with autism in New York and Connecticut
- a Florida internet sales business in unemployment proceedings in New York and Michigan
- a yoga company in workers' compensation and unemployment proceedings in New York
- a nationwide sponsor of educational tours in a California EDD proceeding involving tour directors classified as independent contractors