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## CLIENT ALERT

NC Employee Fair Classification Act

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By: L. Diane Tindall

### **The North Carolina Employee Fair Classification Act Goes into Effect 12/31/17**

If you are a North Carolina company that engages workers as independent contractors, you should be aware of a new state law that goes into effect at the end of this year. The Employee Fair Classification Act (EFCA) is a new law that targets the misclassification of workers as independent contractors rather than employees. Unlike employees, independent contractors are ineligible for certain legally-mandated benefits, such as workers' compensation insurance, unemployment benefits and overtime pay. Employers also do not have to withhold federal and state taxes on payments made to independent contractors, or pay Medicare and Social Security taxes in connection with those payments.

Workers who are in an independent trade, business or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

A worker is not an independent contractor if he performs services that can be controlled by an employer (what will be done and how it will be done). This applies even if the worker is given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

In order to prevent employers from misclassifying employees as independent contractors, the EFCA establishes an Employee Classification Section (ECS) within the North Carolina Industrial Commission that will receive and investigate complaints about misclassification and report suspected violations to various other government agencies, including the US Department of Labor (which enforces federal wage and hour laws); the North Carolina Department of Labor (which enforces state wage and hour laws); the Industrial Commission (the state agency that oversees workers' compensation); and the Employment Security Division in the Department of Commerce (the state agency that oversees unemployment benefits).

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The EFCA also requires that all North Carolina employers provide notice to their workers about their rights under the Act and to display a poster that includes information about the EFCA in plain language.

Before the EFCA goes into effect, North Carolina companies should carefully examine the facts and circumstances of each worker engaged as an independent contractor and assess whether or not this individual is correctly classified. Employers found to have misclassified workers may be held liable for back payroll taxes and unpaid benefits, as well as fines, penalties, interest and attorneys' fees under the various employment laws.

If you have any questions related to this Client Alert, please contact one of the following members of our Employment Practice Group:

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