

TAKING CONTROL OF YOUR DESTINY

Staying One Step Ahead of The
Department of Labor

Presented By:
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Moore Ingram Johnson & Steele, LLP



The New Department Of Labor Advertising Campaign

For assistance contact us at
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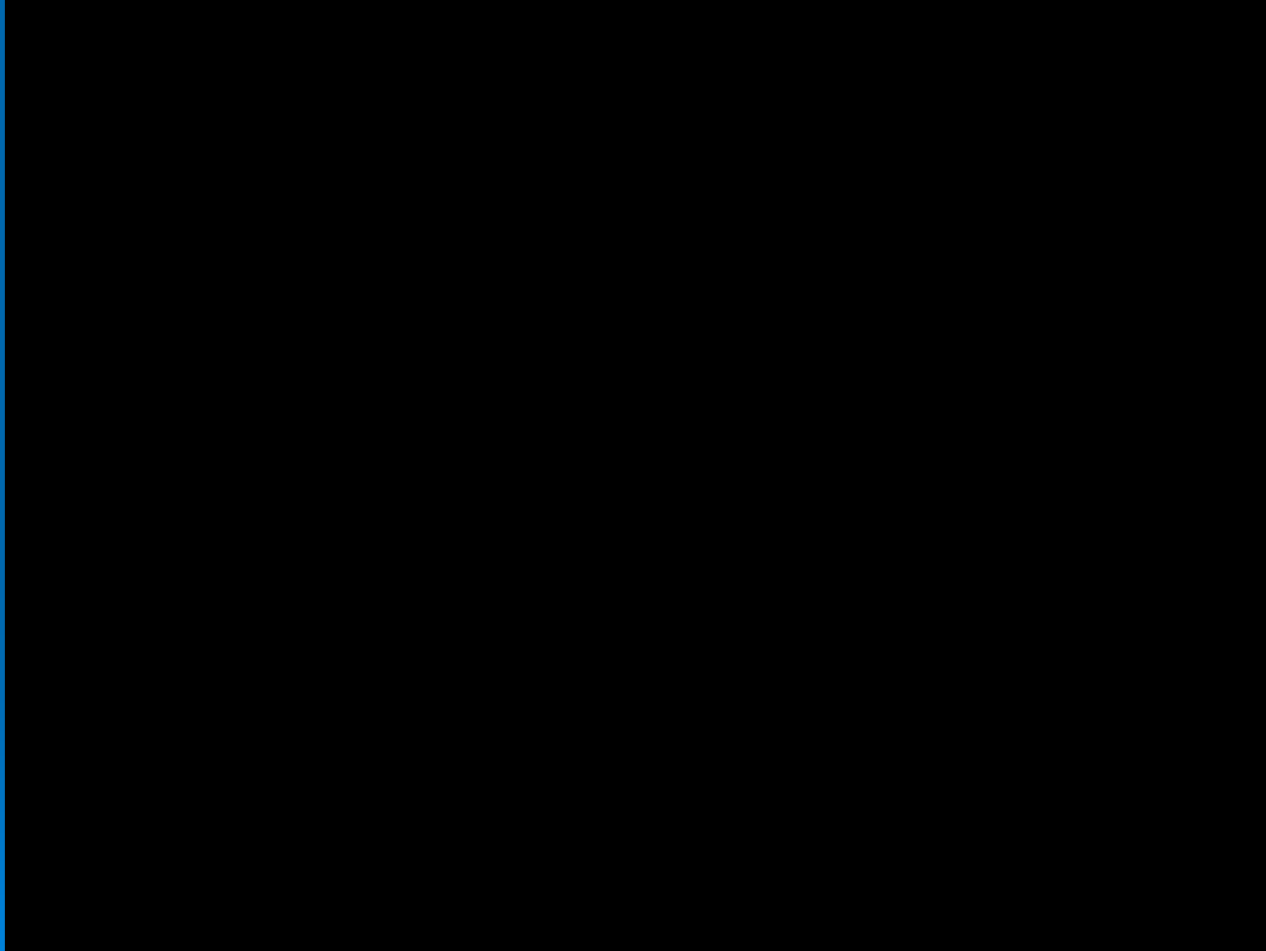
We Can Help
U.S. Department of Labor, Wage and Hour Division

Recordkeeping
Hours Worked
Minimum Wage
Overtime
Labor Law Enforcement
Family Leave

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New DOL Smartphone App!!

- **May 9, 2011:**
- The U.S. Department of Labor today announced the launch of its first application for smartphones, a timesheet to help employees independently track the hours they work and determine the wages they are owed.
- Available in English and Spanish, users conveniently can track regular work hours, break time and any overtime hours for one or more employers. This new technology is significant because, instead of relying on their employers' records, workers now can keep their own records. This information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records.

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➤ **Self-Audit in Four Areas:**

1. Should any independent contractors be employees?
2. Are all workers legally allowed to work in the United States?
3. Are any non-exempt employees misclassified as exempt?
4. Are all non-exempt employees receiving proper overtime pay?

Should Any Independent Contractors Be Employees?

- Key test is the amount of control over the work-product generated.

- This factor affects:
 1. Wages and Benefits
 2. Federal Taxes
 3. State Taxes
 4. Unemployment
 5. Workers' Compensation
 6. Record Retention

Are All Workers Legally Allowed to Work in the United States?

- I-9 documentation.
- Employers are not allowed to eVerify existing workforce with proper I-9 documentation
- Diary for term specific work visa.

Are Any Non-Exempt Employees Misclassified As Exempt?

- Look at the employee's duties, not the employee's job title.
- Is the worker earning enough money (\$455 per week) to be exempt?
- Does the worker fit within the administrative, professional, executive, or other narrow exemption?

Are All Non-Exempt Employees Receiving Proper Overtime Pay?

- No “comp” time outside of the workweek.
- All income must be included in overtime rate.
- Time and a half for all hours over 40.

Employer Action Items

1. Fix recordkeeping and misclassification problems.
 - Get rid of documents older than three years
 - Make catch-up payments going back two years
 - Pay workers correctly going forward
2. Ask lawyer to audit.
3. Follow remedial steps suggested after lawyer's audit.

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- You are now ready for a Department of Labor investigation, audit, or lawsuit.
- Contact Jeffrey A. Daxe (jad@mijs.com) to answer any questions about your own audit, performing an audit after the employer audit, or to defend a Department of Labor investigation or lawsuit.

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Questions & Answers

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