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Payroll Fraud Bill Would Crack Down On Misclassification

By **Matthew Villmer**

Law360, New York (November 15, 2013, 4:52 PM ET) -- Sen. Bob Casey, D-Pa., introduced a bill Tuesday that would prohibit employers from misclassifying employees as independent contractors in order to evade taxes, fair labor standards and safety protections.

The Payroll Fraud Prevention Act specifically targets employers that shift the unemployment and workers' compensation tax burdens to their employees, requiring them to issue a specific notice to all workers classified as independent contractors, informing them of their rights.

The prescribed notice also gives all workers the contact information for their local U.S. Labor Department office, and if an employer fails to give a worker notice under the act, the government will presume the worker is an employee for all legal and tax purposes.

"Companies should not be able to cheat their employees out of fair compensation by deliberately misclassifying them," Casey said in a public hearing on employment fraud earlier this week. "This unscrupulous practice disadvantages law-abiding companies, impacts hard-working middle-class families and hurts our economy."

The legislation also imposes a \$1,100 employer fine per worker misclassification, with a \$5,000 special fine for repeat offenders. In addition, the act would require the creation of a website that summarizes the law in plain language for all workers to fully understand.

After hearing testimony from numerous individuals that dealt with the negative consequences of employee misclassification, Casey announced his introduction of the new bill.

One witness, Matthew Anderson, struggled with an enormous tax burden and unexpected medical bills after a construction company forced him to change his employment status from full-time employee to independent contractor.

"We were told the recession cut into [my employer's] bottom line and we were now competing for jobs," Anderson said. "They wanted to switch over to another company that they owned and we were given a choice: work as an independent contractor or don't work at all."

To keep working in the tough economy, Anderson said he registered for a "doing business as" name, as his previous employer had directed. The company treated Anderson exactly as it did before, but instead of receiving a W-2 at the end of the year, he received a 1099 form, meaning he was then responsible for his portion of employment tax and his

employer's portion, according to hearing testimony.

Switching from an employee to an independent contractor also caused Anderson to lose his health insurance, and shortly after his employment reclassification his hand slipped into a table saw, garnering him hefty medical bills that wrecked his family's credit, he said.

The bill has three co-sponsors: Sens. Sherrod Brown, D-Ohio; Al Franken, D-Minn.; and Tom Harkin, D-Iowa.

The act was referred to the Senate Health, Education, Labor and Pensions Committee and is currently awaiting debate.

--Editing by Elizabeth Bowen.

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