

## REPRESENTATIVE ENGAGEMENTS

Representative engagements are divided into our defense of independent contractor “misclassification” lawsuits and administrative proceedings, and independent contractor “compliance” engagements by the co-chairs of Locke Lord’s independent contractor practice.

(These engagements are in addition to our defense of dozens of other lawsuits and administrative proceedings alleging misclassification of employees as exempt from overtime or minimum wage.)

### MISCLASSIFICATION

- 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
- Defending a courier company in three California class actions alleging the couriers 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
- Defending large ethnic baked foods company in claim by distributor and helper claiming they were misclassified as independent contractors and denied rights under federal and state wage and state franchise law
- Defending nationwide insurance company in California in class and representative action claims by insurance agents for alleged misclassification as independent contractors and violations of PAGA and Fair Credit Reporting Act
- Defending oilfield services company in U.S. Department of Labor audit and investigation of welders and other oilfield workers in Texas alleging violation of federal wage and hour laws for alleged misclassification as independent contractors
- 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 claim
- Serving as special independent contractor counsel and obtaining summary judgment in favor of au pair agency in misclassification class and collective action by local childcare consultants
- Defending large ethnic baked foods company in lawsuits by three distributors claiming they were misclassified as independent contractors, compelling arbitration and settling with all three on modest terms
- 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
- Successfully defending nationwide insurance adjusting company in worker classification audit of insurance adjusters by IRS
- Defending a large snack food company in a breach of contract lawsuit in Virginia by an independent master distributor
- Defending collective actions by volunteers/participants in a drug rehab program who claim they are employees and been misclassified as independent contractors
- Defending a collective action case brought by a pipeline inspector
- Defending arbitrations brought by directional drillers who claim they were misclassified as independent contractors following a motion to compel arbitration
- Defending nationwide insurance company in class action claims in California by insurance agents for alleged misclassification as independent contractors and violations of California Labor Code
- Defending a 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 insurance companies against mass joinder claims by insurance agents for misclassification as independent contractors and alleged violations of California Fair Employment and Housing Act
- Defending a lawsuit for breach of the Massachusetts independent contractor laws by an executive paid on a 1099 basis
- Defending a nationwide group fitness company in an IRS audit of its independent contractor classification of trainers

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- Defending a large snack food company in a franchise practices act by an independent distributor in Arkansas and obtaining dismissal on summary judgment
- 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
- Representing an Oregon 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 two discrimination and retaliation claims before a state agency by an independent distributor
- Defending a nationwide interpreting and translating company in a comprehensive IRS employment tax audit
- Defending a Puerto Rican security company in an overtime audit conducted by the U.S. Department of Labor
- Defending an information technology company in an IRS SS-8 proceeding commenced by a worker classified as independent contractor
- Formally protesting a government agency's failure to issue a procurement contract to a government contractor based on the independent contractor status of service providers
- Defending multiple personal injury cases in Delaware, Louisiana, New Jersey, New York 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
- Conducting due diligence and assessing the potential for misclassification liability of companies that make extensive use of independent contractors for clients seeking to acquire or invest in such businesses
- Calculating the labor, employee benefit and tax liability of a nationwide company faced with multiple lawsuits and enforcement proceedings for a client that was contemplating investment in the company
- Defending national, regional and local companies at unemployment, workers compensation, disability benefits and tax 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 and/or an assessment of taxes and penalties for a claimant and similarly-situated workers, including:
  - » A nationwide interpreting and translation services company in unemployment proceedings in Alaska, Illinois, Maryland, Pennsylvania and as substitute counsel in New York
- » 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 agency, regarding the classification of professional couriers
- » A California mental health management service company and independent therapy provider customers
- » A nationwide last mile logistics company and drivers providing delivery and white glove service
- » Nationwide real estate sales companies regarding real estate agents in California, Wisconsin, Illinois, Pennsylvania and New Jersey
- » An amateur sports organization in a challenge from a workers compensation board to the independent contractor designation of coaches
- » A tutor referral business in multiple unemployment proceedings involving independent tutors in California, Colorado, Maryland, Michigan, Minnesota, Nevada, New York, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin, and an unemployment hearing for such client in California resulting in the dismissal of the claim
- » 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
- » 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 and immigration proceedings regarding drivers, sales agents and merchandisers in New York, New Jersey and Florida
- » A small snack food company in an unemployment hearing in Pennsylvania by an independent distributor
- » A Connecticut tutoring referral company, as substitute counsel, in the appeal of an unemployment determination regarding the status of tutors who were referred to company clients
- » 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 design consultants
- » An educational company in an enforcement proceeding with the Massachusetts Attorney General's office regarding the classification of teachers and its affiliates in unemployment proceedings in Florida, New Hampshire, Oregon 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
- » A West Virginia property research 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 editors working 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, as substitute counsel, in an appeal of a New York unemployment decision regarding independent music teachers
- » 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 fashion designer in a wage and hour investigation in New York focusing on alleged misclassification of independent fashion workers
- » A nationwide sponsor of educational tours in a California EDD proceeding involving tour directors classified as independent contractors

## COMPLIANCE

- Restructuring and re-documenting independent contractor relationships for over 75 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, among others:
  - » A travel services agency operating in 46 states and independent travel affiliates
  - » A nationwide insurance adjusting company and independent claims adjusters
  - » A beef jerky company and independent distributors
  - » A local delivery service in Minneapolis and couriers
  - » A nationwide home renovation company and liaisons with home renovators
  - » A worldwide electrical manufacturing company and contract laborers
  - » A nationwide peak fitness company and its independent trainers
  - » An on-demand specialty delivery company and its independent couriers
  - » A global medical device company and independent clinical consulting trainers
  - » A meditation organization and independent instructors
  - » A food and beverage manufacturing and distribution company operating in nine Eastern states and independent route salesmen, drivers, owner-operators and separate business entities
  - » 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
  - » A New York frozen food distributor and independent delivery drivers, consistent with New York's Commercial Goods Transportation Industry Fair Play Act
  - » 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 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 based on the West Coast and independent tutors in more than a dozen states
  - » Nationwide direct sellers and independent sales associates
  - » An amateur athletic organization and independent coaches and trainers
  - » A court reporting service and independent certified court reporters
  - » A New Jersey-based global pharmaceutical company and independent scientists and medical experts

- » A physical therapist referral company and independent licensed health professionals
- » 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
- » A massage therapy center and independent massage therapists
- » An automobile repair company and independent salespersons selling hail damage repairs
- » Information technology recruiting and sourcing companies and independent IT consultants, programmers and technicians
- » A 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 demonstration specialists
- » A regional aquatic instructional company and independent occupational and physical therapists who provide services to children with autism
- » A high school exchange program and international exchange coordinators
- » A California dog walking company and independent dog walkers
- » 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 accounting firm in Colorado and independent CPAs
- » A musical 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 security company and off-duty police officers providing security services for retail customers
- » A songwriting and music instructional company and independent instructors
- » A California beverage delivery company and independent delivery workers
- » A California home cleaning referral service and independent house cleaners
- » A global education company's U.S.-based online language school and independent instructors
- » A nationwide courier company and independent couriers
- Preparing a decision matrix for a nationwide staffing company and nationwide direct seller to facilitate retention of independent contractors to minimize exposure to state and federal independent contractor laws
- Updating and enhancing websites and marketing material of businesses that use independent contractors to ensure language used is consistent with independent nature of contractors
- Drafting comprehensive independent contractor provisions for a construction company to ensure subcontractor compliance with new laws in Pennsylvania and other states regulating the use of independent contractors in the construction industry
- Examining independent contractor laws in two dozen states for a California 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
- Creating continuing education and management training programs for companies using independent contractors
- Advising a worldwide cosmetics company on preventive steps to avoid the hiring of temporary and casual photographers, models, designers and other consultants as independent contractors for projects throughout the United States where compliance with state and federal laws may be in doubt
- Advising a staffing company seeking to onboard independent contractors from government contractors as to how to enhance independent contractor compliance
- 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
- Assisting clients in various industries in voluntarily reclassifying workers previously treated as independent contractors or redistributing such workers through the use of workforce solution, staffing and temporary employment agencies
- 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



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- 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, and determining if the exclusion of contractors impacts nondiscrimination testing requirements under ERISA
- 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 large snack food company in response to independent distributors’ breaches of their independent contractor agreements