



# Willson & Pechacek, P.L.C. Newsletter



General Edition

June 2010

## To Text, or Not to Text: That's No Longer the Question in Iowa

**T**he Iowa legislature passed a new law this year that bans texting while driving. The new law also bans some teenagers from talking on cell phones while driving. This article highlights important provisions of the new law, which becomes effective July 1, 2010.

*The prohibition on texting while driving takes effect July 1, 2010*

Here is what ALL drivers in Iowa need to know:

**Prohibited:** In Iowa, everyone is prohibited from reading, writing, or sending text messages or emails while driving unless the vehicle is at a complete stop off the roadway.

**Exceptions:**

- Use of a GPS device.
- Sending text messages using voice commands.
- Entering a number to place a phone call.
- Public safety workers and health care professionals may read text messages while performing official duties.
- Truckers, bus drivers, and emer-

gency personnel may continue using digital dispatch systems.

- Anyone may read a message about safety-related information, such as Amber Alerts and traffic or weather alerts.

**Penalties:** A violation is a simple misdemeanor with a fine of \$100, including court costs. It is not a moving violation and is not cause to suspend a license. There are heightened penalties if you kill or seriously injure someone in an accident while texting.

**Enforcement:** Officers may not stop an adult based only on a

*(Continued on page 4)*

## Employers Beware: New Crackdowns on Independent Contractor Relationships

**E**mployers using independent contractors (ICs) are facing increasing scrutiny because the IRS and federal and state labor departments have implemented new initiatives to search for employers who "misclassify" employees as ICs.

When employees are misclassified as ICs, the workers and employers underpay several taxes including Social Security, Medicare, and unemployment insurance.

These underpayments mean substantial lost revenue to the federal and state governments. Although IC relationships have long been an audit target, governments experiencing deep financial pressures are

now scrutinizing them with new fervor.

For example, President Obama's fiscal year 2011 budget allocates \$25 million to scrutinize employers using ICs, which includes hiring investigators to find workers who can be re-categorized as employees. The result for Uncle Sam will be increased revenue: the Obama budget states the initiative will bring in an additional \$7 billion over 10 years.

In addition to the new budget program targeting ICs, in February 2010, the IRS launched a three-year program to randomly audit 6,000 employers. These examinations will

*(Continued on page 3)*

## Pechacek Receives 2010 Heritage Award

The Alegent Health Foundation awarded the 2010 Heritage Award for Business to attorney Frank W. Pechacek, Jr. in recognition of his professional and personal contributions to the community.

The Heritage Award was created to celebrate and pay homage to those who have enriched the community and established a legacy on which future Heritage Award honorees can build.

The award for Business is one of four different Heritage Awards.

*(Continued on page 2)*

## You Said What? Five Things You Should Not Say to Your Insurance Company

**S**ome words are red flags to insurers and using them could mean that your claim might be delayed or even denied.

### 1. "I Think ..."

Never begin a statement regarding a claim with these words. If you are not sure, do not guess. What you say could cause your claim to be delayed or denied, and if you are wrong - - say you report driving at 30 mph before an accident, but police later prove you were going 50 mph - - it could hurt your credibility. Particularly beware of speculating on blame or causation. For example, if you suggest that a water leak is due to a construction defect, you could give the insurer an excuse not to pay due to a policy exclusion. Stick to the facts. Should the insurance representative ask you a question you cannot answer, simply say, "I do not know." If the person is taking a written or recorded statement, ask for a transcript of the statement to review for misstatements.

### 2. "I Got Whiplash"

Fraud costs auto insurers up to \$6.8 billion a year, reports the Insurance Research Council, and suing for damages caused by whiplash is a fraudster favorite ("Oh, my neck!"). Merely mentioning the term is likely to get your claim flagged for further investigation. Whiplash is a specific diagno-

sis. If a doctor says that you have it, then you should report it as such. Otherwise, if you feel neck pain, just refer to it as neck pain, not whiplash.

### 3. "It's an Experimental Treatment"

Truly experimental or investigational medical procedures are typically not eligible for health insurance coverage. If a doctor tells you he wants to experiment with a treatment, do not represent it using those words. In medical terms it may not actually be experimental or investigational. If it is proven effective, your doctor deems it medically necessary, and it is not an exclusion in your insurance policy, then it should be covered. Verify with your doctor that the treatment meets the above litmus tests before going to the insurer.

### 4. "My Basement Flooded"

With homeowners insurance, the word "flood" is a red flag. The word refers to an act of weather or an overflow from a nearby body of water, and a standard homeowners policy does not cover it. Instead, you would need flood insurance. Therefore, do not use the flood-word if your basement is knee-deep in water because of a burst pipe. Damages from such an incident should be covered by a homeowners policy, but calling it a "flood"

could muddy the waters, so to speak.

### 5. "Just Send Me a Check"

When filing a home or auto claim, do not emphasize that you are just looking for the cash. If you were to say, "I do not care about the roof leak, I just need the money," that admission could slow things to a halt. Technically, you are supposed to use the payout to make the repair for which you filed. While it is true that most insurance companies are not going to check up on you, you will certainly raise the fraud unit's suspicions if you imply that you will just take the cash, and then you might lose out on the money altogether.

*By Jamie Cox*

#### *Heritage Award (Continued from page 1)*

Heritage Awards are presented to individuals who excel in the areas of: Arts/Humanities, Business, Health/Medicine, and Education.

This year was the 27th year for the Heritage Awards. The 2010 Heritage Awards were awarded at a Gala Dinner at Harrah's Grand Ballroom in Council Bluffs on March 20, 2010.

Proceeds from the event support nursing and general scholarships for Mercy Hospital employees.

*By Karl Schmidt*

*Crackdowns on Independent Contractor Relationships (Continued from page 1)*

delve into compliance with employment tax issues, including the misclassification of ICs', fringe benefits, reimbursed expenses and the compensation of owner-employees.

Further, the IRS signed information-sharing agreements in 2008 with labor and workforce agencies in 29 states to assist them in uncovering employment tax avoidance schemes and ensure proper worker classification. In Iowa, a task force set up by Governor Culver issued a 2009 report stating that 15 percent of employers wrongly classified workers. The task force called for increased policing of classification in Iowa.

Most recently, on April 22, 2010, a bill called the Employee Misclassification Prevention Act was introduced in Congress by the House and the Senate to make misclassification of employees as ICs a federal labor law violation, impose record-keeping and notice obligations upon employers – even those that properly classify their ICs – and subject employers to hefty penalties for non-compliance with the proposed new law. We will have to wait to see if this bill passes.

**What do auditors and investigators look for?** Unfortunately, no single factor determines a worker's status. Instead, each situation is determined by the facts and circumstances involved. However, here are some key factors:

- *Behavioral Control.* An employee generally is told when, where, and how to work, as well as what order or sequence to follow. An IC is free to determine the means and methods of accomplishing the task.

- *Tools.* An employer usually provides tools, equipment and work-space to employees. ICs typically

provide their own equipment, tools and facilities.

- *Assistants.* Employees don't hire and pay others to help them do their jobs (although they may be told to hire assistants for the company). ICs often hire, supervise, and pay their own assistants.

- *Training.* Employees are more likely to receive training from their employers. ICs obtain their own training.

- *Other Customers.* ICs generally make services available to the public and are able to work for two or more businesses.

- *Integral Role.* An employer-employee relationship is supported when workers perform services essential to the success of a business operation.

- *Financial Control and Risk.* An employer has the right to control the financial aspects of a job, such as the business expenses the employee incurs and how staff members are paid. On the other hand, a worker's opportunity to personally earn a profit and assume risk of loss may indicate an IC status.

During recent tough economic times, many businesses increased their use of ICs to cut labor costs. However, employers that misclassify workers as ICs can end up with substantial tax bills and penalties for failing to pay employment taxes. They also face liability if a mislabeled worker sues for benefits they claim that they were eligible for, including overtime, health insurance, retirement plan contributions, sick leave, and paid vacation.

**What's an employer to do?** There are several things that you can do right now to increase the probability that workers are properly classified as employees or ICs:

- *Have written, signed contracts* with workers classified as ICs,

spelling out the terms and conditions of the relationship. You should consult with your attorney to prepare these contracts.

- *Once contracts are in place, give ICs leeway* over how they perform their duties, and resist the urge to supervise them the way you supervise employees.

- *Send each IC a Form 1099* showing non-employee income if \$600 or more is paid in a calendar year. The annual deadline for sending these forms to an IC is January 31.

- *Consistently treat workers* performing similar tasks as either ICs or employees. Do not supply outside workers with services and equipment that you give employees. For example, some employers run into trouble after they provide the ICs with office space, computers, cars and other perks.

- *Maintain good records.* You should keep an IC's taxpayer ID number and other information required by the IRS. However, you should also keep items that prove the person is self-employed and offers services to the public, such as business cards, letterhead, invoices, newspaper and phonebook advertisements, and copies of business licenses and printouts of web site pages.

- *Do a self-audit* of each worker's or each class of workers' status before you are investigated or audited.

- *Have your tax attorney or employment law attorney* conduct an audit of each worker's status.

With the increased scrutiny coming from the federal and state governments, it's a good time to examine your organization's use of ICs to ensure you are in compliance with all applicable laws. You should consult your attorney for additional information and assistance in protecting your business.

*By Jamie Cox*

*Texting while driving (Continued from page 1)*

texting violation, and they may not confiscate your phone. Also, during the first year of the new law only warnings, and not tickets, will be issued.

*Teen drivers (prior to getting their full driver's licenses) face much tighter restrictions and could lose their license/permit for a violation.*

Here is what TEEN drivers in Iowa with a learner's permit, intermediate license, school license or restricted work license also

need to know:

Prohibited Devices for Teens: Using *any* electronic communication or entertainment device while driving is prohibited unless the vehicle is at a complete stop off the roadway.

Exceptions: Devices that are permanently installed in the vehicle or that are operated through permanently installed equipment are allowed.

Penalties for Teens: A violation is a simple misdemeanor with a fine of \$100, including court costs. It is not a moving viola-

tion, but as with all beginner license violations, the D.O.T. may impose license restrictions and suspend or revoke the license. There are also heightened penalties if the teen kills or seriously injures someone in an accident.

Enforcement for Teens: Officers may stop a teen if they see the teen using a phone or other electronic device while driving.

Please contact your attorney if you have any questions about this new law.

*By Jamie Cox*

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**Willson & Pechacek, P.L.C.**

**Newsletter**

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