

William Hays Weissman

Shareholder

Treat Towers
1255 Treat Blvd, Suite 600
Walnut Creek, CA 94597
main: (925) 932-2468
direct: (925) 927-4545
fax: (925) 946-9809
wweissman@littler.com



Practice Areas

Employment Taxes
Staffing and Contingent Workers
Affirmative Action/OFCCP Compliance
Wage and Hour

Overview

Using a proactive, practical approach that uses the law to advance business needs rather than hinder them, William counsels employers of all sizes, from small start-ups to Fortune 100 companies, how to align their hiring and employment practices to meet their business objectives.

Enhancing Employers' Ability to Attract, Retain and Motivate (ARM) the Right Talent

William is adept at helping professional service firms in fields such as marketing, advertising, accounting, legal, and management consulting solve the unique problems they face when trying to attract, retain and motivate (ARM) the right talent, whether it be implementing unique benefit programs or drafting specialized employment contracts. He crafts employment policies, agreements and benefit programs that enhance employers' ability to ARM the right talent. In complement to his legal background, William holds additional graduate degrees in business management and taxation, which provide him with unique understanding of the business and legal perspectives employers need to create the right culture for a high performance workforce. William provides:

- Attracting and Hiring Services
 - Evaluating hiring policies
 - Drafting both employment and independent contractor agreements
 - Advising on creative ways to attract and retain talent
- Retaining and Motivating Services
 - Helping employers understand fringe benefit programs
 - Drafting fringe benefit policies

- Addressing tax consequences of various forms of compensation

Employment Tax Expertise

William has extensive experience dealing with employment tax issues, which are often critical to understanding the implications of various incentives employers use to ARM talent. He counsels clients on a broad range of employment tax issues, including the proper classification of workers as employees or independent contractors and the use of contingent workers; and handling garnishments, the tax implications of settlements, the taxation of fringe benefits and the electronic payment of wages and use of payroll debit cards.

William is a core member of Littler's Employment Taxes, and Staffing and Contingent Workers practice groups. He is a frequent speaker and author on employment tax issues, and his articles have appeared in numerous publications including *State Tax Notes*, *State and Local Tax Lawyer*, *CPA Journal*, *Journal of Taxation and Investments*, among others. He is also the author and co-author of four treatise chapters on employment tax issues.

Affirmative Action and Office of Federal Contract Compliance Programs (OFCCP)

William represents and assists government contractors with audits by the Office of Federal Contract Compliance Programs. He regularly advises clients on issues relating to OFCCP jurisdiction, alleged single employer status, and disparate impact and discrimination in hiring, promotion and compensation.

Employment Litigation Defense

While William counsels employers on policies and practices intended to mitigate the risks of litigation, he also defends employers when disputes do arise with current or former employees or government agencies, whether the IRS, state tax agencies, the OFCCP or US or state departments of labor, on a wide range of employment related issues, including employment taxes, workers' status as employees or independent contractors, discrimination and retaliation, wrongful termination and wage and hour claims such as unpaid overtime.

Professional and Community Affiliations

- Member, American Bar Association
 - Chair, Employment Taxes Committee - Tax Section
 - Chair, Employment Taxes Subcommittee - Business Law Section
- Member, American Payroll Association
- Member, Contra Costa Bar Association
- Member, East Bay Tax Club
- Fellow, American Bar Foundation

Education

M.B.A., University of California, Davis, 2005
LL.M., Golden Gate University School of Law, 1996
J.D., District of Columbia School of Law, 1995, *cum laude*
B.A., George Washington University, 1991

Bar Admissions

California

Courts

U.S. Court of Appeals, 9th Circuit
U.S. District Court, Northern District of California
U.S. District Court, Eastern District of California
U.S. Tax Court
U.S. Court of Federal Claims

Publications

"IRS Proposes New Regulations Allowing Travel Expenses for "At-Home" Lodging," April 25, 2012

"IRS Launches Voluntary Compliance Settlement Program for Misclassified Workers," September 23, 2011

"The MTC's Model Mobile Workforce Statute," *State Tax Notes*, May 2, 2011

"The Unemployment Tax Requires Real Reform, Not Just Tinkering," *State Tax Notes*, March 21, 2011

"IRS Issues Guidance on Distinguishing Tips and Other Third-Party Incentive Payments," February 23, 2011

"Mitigate or Litigate: Flexible Working and Legal Exposure," February 1, 2011

"The FedEx Litigation and the Employment Development Department," *Spidell's California Taxletter*, Spidell Publishing, Inc., February 1, 2011

"Term Limits for Contingent Workers: Urban Legend or Necessary Fix?," December 14, 2010

"Debunking Myths About Payroll Debit Cards," November 3, 2010

"California's Unemployment Insurance Appeals Board Changes Regs," *State Tax Notes*, November 1, 2010

"Incorporating Independent Contractors Is No Panacea For Misclassification," *State Tax Notes*, July 26, 2010

"Ohio Loses First SUTA Dumping Case," *State Tax Notes*, June 28, 2010

"California Independent Contractor Withholding," *State Tax Notes*, April 5, 2010

- "Employers Should Be Cautious of New Decision Holding That Severance is Not "Wages" Subject to FICA," March 29, 2010
- "The Truth About Recent Attacks on the Independent Contractor Classification," February 23, 2010
- "IRS Rules that Employer-Provided Clothing Is Not Wages Under Some Circumstances," February 11, 2010
- "Employer's Rights in California UI Benefit Decisions," *State Tax Notes*, February 8, 2010
- "Tax Court: Settlement Payment for Workplace Stress that Exacerbated Physical Condition Not Taxable Income," January 25, 2010
- "Tax Court Reiterates that Emotional Distress Suffered From Claims of Employment Retaliation Is Not Tax Exempt," January 14, 2010
- "Can the Statutory Definition of an Employee Evolve?," *State Tax Notes*, January 4, 2010
- "IRS Announces Pilot Project To Reduce Identity Theft," November 30, 2009
- "California Tax Reform Should Include Payroll Taxes," *State Tax Notes*, October 12, 2009
- "Federal District Court Rules that Back Pay and Front Pay Are Wages Subject to Employment Taxes," August 10, 2009
- "Federal Meddling With State Unemployment Systems," *State Tax Notes*, July 27, 2009
- "California Tax Reform Should Include An Independent Tax Court," *State Tax Notes*, April 20, 2009
- "New California Paycheck Law Aimed at Temp Industry Creates Risk for a Broad Range of Industries," February 18, 2009
- "A Proposed Massive California Unemployment Tax Increase," *State Tax Notes*, February 16, 2009
- "What Does It Mean To Be An Employee in California?," *State Tax Notes*, December 15, 2008
- "Giving Employees Gifts May Require Giving to the Tax Collector Too," November 5, 2008
- "Sixth Circuit Upholds Section 530 Relief for Trucking Company that Treated Drivers as Independent Contractors Based on the Common Law Factors Used in State Proceedings," October 27, 2008
- "What Constitutes a Hearing Before California's Unemployment Insurance Appeals Board?," *State Tax Notes*, October 20, 2008
- "The California Unemployment Insurance Appeals Board's Evidentiary Double Standard," *Messenger Courier World Magazine*, Fall 2008
- "An Employer's Guide to Social Security Administration Notices Regarding Employee "No-Match" Situations," September 23, 2008

- "IRS Provides Guidance on Proper Income Tax Withholding for Nine Common Supplemental Wage Payment Scenarios," June 18, 2008
- "Legislation Proposed to Eliminate Employment Taxes on Employer-Provided Cell Phones," May 1, 2008
- "Are Student Athletes School Employees?," *State Tax Notes*, April 14, 2008
- "Employment Tax Audits: Practical Tips for Accountants," *The CPA Journal*, April 2008
- "Court Reminds Employers to Follow "Lock In" Letters for Employees' Income Tax Withholdings," March 28, 2008
- "Are the California Employment Development Department's "Information Sheets" Invalid Underground Regulations?," *State Tax Notes*, March 24, 2008
- "IRS Establishes Cross Divisional Team to Combat Improper Tool Reimbursement Plans," February 13, 2008
- "Are Emotional Distress Damages Income Subject to Tax? No, Says the DC Court of Appeals in *Murphy v. United States*," *Journal of Taxation of Investments*, Civic Research Institute Inc., Winter 2007
- "San Francisco Reverses Itself on Payroll Tax on Partner Profits," *State Tax Notes*, November 12, 2007
- "Anatomy of a California Employment Development Department Notice of Assessment," *State Tax Notes*, November 5, 2007
- "The Good Cause Standard For Attempts At Discovery In California Unemployment Tax Cases," *State Tax Notes*, October 15, 2007
- "An Employer's Guide to Employee Leave-Sharing Programs," September 10, 2007
- "What is Integral to a Business Entity?," *State Tax Notes*, August 13, 2007
- "D.C. Circuit Reverses Course and Finds Emotional Distress Damages Are Income Subject to Tax," July 11, 2007
- "IRS Will Not Challenge Local Lodging Expenses for Employees If Lodging Is Necessary to Participate in a Business Meeting or Function," July 3, 2007
- "Air Couriers International v. Employment Development Department and the Economic Reality Test," *State Tax Notes*, May 28, 2007
- "California Court of Appeal Expands Common Law Control Test in Tax Case: Use of Borello Economic Reality Test Upheld," May 21, 2007
- "Little-Noticed California Unemployment Tax Legislation," *State Tax Notes*, April 2, 2007
- "Proposed Legislation Would Require California Employers to Verify Employee's Social Security Numbers And Penalize Those Who Don't," March 19, 2007

"DOL's Final Rule Regarding "Able and Available for Work" Should Remind Employers to Review All Unemployment Claims," February 27, 2007

"Employment Tax Ramifications of Participating in the IRS's Backdated Stock Options Initiative," February 13, 2007

"IRS Provides Guidance For Employers That Use Smart Cards And Debit Cards To Provide Transportation Fringe Benefits To Employees," December 5, 2006

"Dealing With Employees' Tip Income In Large Food and Beverage Establishments: New IRS Agreement ("ATIP") Available January 1, 2007," September 27, 2006

"IRS Issues Final Regulations on Supplemental Wage Payments," September 11, 2006

"Are Emotional Distress Damages "Income" Subject to Tax? "No" Says The D.C. Court of Appeals in Murphy v. United States," August 25, 2006

"Federal Court Affirms Legality of Deducting Credit Card Processing Fees From Servers' Tips," April 13, 2006

"Multistate Employers Should Review Their "New Hire" Reporting," April 11, 2006

"An Employer's Guide for Dealing with "Unusual" Tax Withholding Requests," March 17, 2006

"An Employer's Guide for Responding to an IRS Wage Levy," January 9, 2006

Press

"Budget Erosion, Looming Retirements Add to Demands on IRS Compliance As Health Care Reform, FATCA Implementation Swing Into Play for 2012," January 11, 2012

"William Hays Weissman Appointed Chair of ABA Tax Section's Employment Taxes Committee," July 13, 2010

"Littler Mendelson's William Hays Weissman Elected American Bar Foundation Fellow," February 22, 2010

"Littler Mendelson's William Hays Weissman Appointed Vice Chair of ABA Tax Section's Employment Taxes Committee," June 16, 2008

Events & Speaking Engagements

"Am I Really An Independent Contractor?," *Tax Section Meeting - American Bar Association, San Diego, CA*, February 17, 2012

"California Employment Development Department and Payroll Taxes," *Tax Section Meeting - American Bar Association, San Diego, CA*, February 17, 2012

"Wage Garnishing Rules & Regulations for HR Executives for 2012," *ExecSense Audio Conference*, December 15, 2011

"Worker Classification Strategies: The New IRS Voluntary Classification Settlement Program and Other Options," *Webinar, American Law Institute - American Bar Association (ALI-ABA), Philadelphia, PA, November 10, 2011*

"Payroll Tax Audits: Best Strategies," *California Tax Policy Conference, San Jose, CA, November 4, 2011*

"Understanding Employment Taxes," *Driver Employment Council of America Conference - Napa, CA, October 7, 2011*

"Essentials of California Wage Garnishments," *Lorman Webinar, January 26, 2011*

"State Employment Tax Update," *Tax Section Meeting - American Bar Association - Boca Raton, FL, January 21, 2011*

"Employment Law 101: Employment Law Basics for Accountants & Financial Professionals," *14th Annual San Diego Tax and Accounting Institute - San Diego, CA, November 17, 2010*

"From Hiring to Firing: Ten Mistakes Small Businesses Should Avoid," *California CPA Society - Oakland, CA, July 29, 2010*

"Current Federal and State Developments Relating to Worker Classification Issues," *East Bay Tax Club, February 16, 2010*

"The Evolving Tax Environment and Independent Contractors: Is There a Future for IC Status?," *Staffing Industry Analysts Webinar, December 10, 2009*

"Screening and Classifying Your ICs: In the Safe Harbor Really Safe?," *Co-Employment and Risk Forum Conference - Washington, D.C., June 19, 2009*

"Federal Employment Tax Update," *Tax Section - American Bar Association - Washington, D.C., May 8, 2009*

"Handling Federal Garnishments from Receipt to Termination," *Lorman Webinar, 2009-2010*

"California Income Tax Withholding: Unveiling the Mysteries at the FTB and EDD," *California Tax Policy Conference - San Francisco, CA, November 7, 2008*

"California Employment Tax Developments," *American Bar Association Tax Section, San Francisco, CA, September 26, 2008*

"Emerging Employment Tax Issues and Trends," *Salt Lake City, UT, September 7, 2008*

"Employer's Tax Guide to Gifts, Prizes, Bonuses, Business Expenses and Other Payments to Employees," *Lorman Webinar, 2008-2010*

"Practical Tips For Handling A California Employment Tax Audit," *East Bay Tax Club, March 19, 2007*

Books & Book Chapters

- Independent Contractors, *Drafting Employment Documents for California Employers*, Chapter 4, CEB, 2011

- Is the Taxpayer/Worker an Employee or an Independent Contractor for IRC Purposes?, *Effectively Representing Your Client Before the IRS*, Chapter 17, co-author: G.J. Stillson MacDonnell, Section of Taxation - American Bar Association, 2009
- Federal Insurance Contribution Act, *LexisNexis Tax Advisor*, co-author: G.J. Stillson MacDonnell, LexisNexis
- Federal Unemployment Tax Act, *LexisNexis Tax Advisor*, co-author: G.J. Stillson MacDonnell, LexisNexis

Blog Posts

"California Appellate Court Holds Insurance Agents Not Employees Under California Law," *Wage & Hour Counsel*, January 11, 2012

"Recent Changes to Federal Tax Laws Affecting Employers," *Employment Law Update*, November 22, 2011

"IRS Provides Updated Guidance on the Use of Employer-Provided Cell Phones," *Employment Law Update*, September 15, 2011

"Arizona Allows Employers to Mandate Electronic Payment of Wages," *Wage & Hour Counsel*, July 12, 2011