

Is Trump's DOL Pulling Back on Independent Contractor Classification Enforcement? Does it Matter?

by Aaron Goldstein

During the Obama administration, the Department of Labor issued guidance letters intended to crack down on the misclassification of employees as independent contractors. On Wednesday, June 7, the DOL announced that it is withdrawing two such guidance letters. While the DOL was quick to state that this withdrawal “does not change employers’ legal responsibilities,” this action suggests that the DOL may enforce employee classification rules with less zeal than it did under the prior administration.

The prior DOL guidance took the position that “most workers are employees under the FLSA’s broad definitions” and focused on whether “the worker is really in business for him or herself (and thus is an independent contractor) or is economically dependent on the employer (and thus is its employee).” While not making the point explicitly, the prior guidance seemed to create a strong presumption that workers are employees.

While this guidance withdrawal may be a sign that enforcing employee classification rules will be a lower priority for the DOL, employers should be careful not to treat this as a license to play fast and loose with employee classification rules. The front line DOL employees charged with investigating and enforcing employee classification rules remain the same, and at best, it will be a while before changing administrative priorities make their way to ground level. More importantly, companies remain vulnerable to private lawsuits for overtime and benefits denied to workers inappropriately classified as independent contractors. Courts are not bound by the DOL’s interpretive guidance and will continue to enforce the law as they understand it. Furthermore, numerous state agencies in blue states have decided to increase their enforcement efforts in light of perceived deregulation at the federal level.

While the enforcement landscape for employers may be changing, it may not in fact be getting easier. If anything, the enforcement landscape is fracturing between state and local levels and the courts, forcing multistate employers to deal with multiple and sometimes inconsistent enforcement regimes. A decreased enforcement priority at the federal level may turn out to be a trap for unwary employers.

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