

July 20, 2015 [www.mcvpr.com](http://www.mcvpr.com)**LABOR & EMPLOYMENT LAW ALERT*****U.S. Department of Labor's Wage and Hour Division issues Administrator's Interpretation 2015-1***

On July 15, 2015, David Weil, Administrator of the U.S. Department of Labor's Wage and Hour Division issued an interpretation, [Administrator's Interpretation 2015-1](#): "The Application of the Fair Labor Standard Act's 'Suffer or Permit' Standard in the Identification of Employees who are Misclassified as Independent Contractors."

The Administrator understands that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standard Act ("FLSA") may be helpful to employers in classifying workers, ultimately curtailing misclassification. The interpretation provides that under the expansive definition of "employ", most workers are "employees" under the FLSA.

The Interpretation further provides that the definition of "employ," should be analyzed in conjunction with the "economic realities" test developed by the courts. The test focuses on whether the worker is economically dependent on the employer, making him or her an "employee", or in business for himself, making him or her an "independent contractor".

The Administrator's Interpretation then addresses each of the factors of the "economic realities" test, providing citations and examples. These factors typically include: (a) the extent to which the work performed is an integral part of the employer's business; (b) the worker's opportunity for profit or loss depending on his or her managerial skill; (c) the extent of the relative investments of the employer and the worker; (d) whether the work performed requires special skills and initiative; (e) the permanency of the relationship; and (f) the degree of control exercised or retained by the employer.

The Administrator's Interpretation is another example of the current administration's agenda regarding worker's rights. The Wage and Hour Division Administrator believes that misclassification of workers has spread and that this Interpretation will assist employers in properly classifying their workers.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following attorneys:

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