

## US Secretary of Labor Withdraws Guidance Regarding Independent Contractors

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The United States Secretary of Labor has withdrawn an informal guidance regarding independent contractors issued in 2015. We reported on the 2015 Administrator's Interpretation here. The 2015 Interpretation provided a detailed explanation of the economic realities test, which is used to determine whether a worker is to be classified as an independent contractor or an employee under the Fair Labor Standards Act (FLSA).

While the 2015 Interpretation did not change existing case law on independent contractor status, it was seen as sending a signal from the Department of Labor (DOL) regarding the agency's focus. The DOL concluded the 2015 Interpretation with the statement, "most workers are employees under the FLSA's broad definitions..." Just as the DOL's 2015 Interpretation did not change existing case law, the DOL's withdrawal of the Interpretation does not change the law in any way. The economic realities test remains the legal standard for determining independent contractor status under the FLSA.

In a news release issued by the DOL regarding the withdrawal of the Interpretation, the agency stated that the "removal of the administrator interpretations does not change the legal responsibilities of employers under the Fair Labor Standards Act... as reflected in the department's long standing regulations and case law." Whether the DOL intends to change its enforcement efforts or not, it bears repeating that misclassifying workers exposes employers to potential liability in civil cases as well as agency audits.

Employers still need to be careful when determining a worker's status as an employee or independent contractor, as the risk of DOL action or private class actions remains. Employers should continue to seek appropriate legal guidance when addressing the issue of whether a worker can be properly classified as an independent contractor.

For additional information on the Interpretation and how it may impact your business, contact Tanya Salgado (215.864.6368; [salgadot@whiteandwilliams.com](mailto:salgadot@whiteandwilliams.com)) or another member of the Labor and Employment Group.

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