

BLOGS

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DOL Issues Guidance on Independent Contractor Classification; Says Most Workers are Employees Under the FLSA

The U.S. Department of Labor (DOL) yesterday issued [Administrators Interpretation 2015-1](#), providing guidance on the classification of employees and independent contractors. The DOL identifies the misclassification of employees as independent contractors as a high priority enforcement issue, labeling it one of the most serious problems facing affected workers, employers, and the entire economy. The DOL's guidance is intended to help employers in classifying workers and to curtail misclassification.

The fifteen page document outlines the familiar multi-factor economic realities test, which courts use to analyze whether workers are employees under the Fair Labor Standards Act (FLSA). The economic realities factors include:

- the extent to which the work performed is an integral part of the employers business;
- the workers opportunity for profit or loss depending on his or her managerial skill;
- the extent of the relative investments of the employer and the worker;
- whether the work performed requires special skills and initiative;
- the permanency of the relationship; and
- the degree of control exercised or retained by the employer.

No one factor is determinative; nor is each factor a necessary condition, but rather a guide to determine whether a worker has economic independence or dependence.

The Administrators Interpretation emphasizes the broad definition of employ under the FLSA to suffer or permit to work characterizing it as intended to ensure as broad of a scope of statutory coverage as possible. The guidance stresses that the economic realities test must be applied liberally in light of this definition, in order to determine whether a worker is truly in business for him or herself (and thus an independent contractor) or whether the worker is economically dependent on the employer (and thus an employee).

The Administrators Interpretation concludes that most workers are employees under the FLSA's broad definitions. The guidance makes clear the DOL's broad approach to analyzing who is an employee under the FLSA, which the DOL characterizes as an issue with critical implications for workers.

Employers should be mindful of the DOL's guidance and may need to revisit their worker classifications under the FLSA. Misclassification can have severe penalties under the FLSA and expose an employer to potential liability for minimum wage and overtime violations, as well as impact employment withholding taxes, unemployment insurance, workers compensation, health insurance, and other employment practices.