

USDOL Issues New Guidance Stating That Most Workers Are Employees, Not Independent Contractors

David Moore
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On July 15, 2015, the USDOL issued **guidance** for determining whether a worker is an employee or an independent contractor under the FLSA. The main takeaway from the guidance is that when analyzing the applicable independent contractor factors, the goal is “to determine whether the worker is economically dependent on the employer (and thus its employee), or is really in business for himself or herself (and thus its independent contractor).” In the USDOL’s opinion, “most workers are employees under the FLSA.” Additionally, the USDOL has entered into agreements with the Internal Revenue Service (IRS) and 23 states to share information and coordinate enforcement efforts, which means that employers who are audited or sued by the USDOL for misclassifying employees as independent contractors may also be referred to the IRS and state taxing authorities, who then may institute claims against employers for unpaid employment for independent contractors who should have been treated as employees. Employers should anticipate that many individuals currently considered independent contractors will not qualify as such under the new guidance. Therefore, the status of any independent contractors with whom the employer contracts should be scrutinized in light of the guidance.

Attorneys

David A. Moore

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