On June 7, 2017, U.S. Secretary of Labor Alexander Acosta announced that the U.S. Department of Labor (DOL) is withdrawing two major pieces of informal guidance issued during the Obama administration, pertaining to joint employment and independent contractors under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq.

The two Administrator Interpretations Letters were issued by the former head of the DOL’s Wage and Hour Division, David Weil. The first guidance letter, Administrator’s Interpretation No. 2015-1, took an aggressive position regarding misclassification of employees as independent contractors. It stressed that the “economic realities” of worker-employer relationships were paramount—i.e., whether, as a matter of economic reality, a worker was dependent on the putative employer—and suggested that most workers should be classified as employees. Although it relied on case law, the Administrator Letter provided additional refinements and, significantly, de-emphasized consideration of “control”—a major element under most common law tests.

The second letter, Administrator’s Interpretation No. 2016-1, pertained to joint employment relationships. It relied largely on regulations promulgated under the Migrant and Seasonal Worker Protection Act, 29 U.S.C. §§ 1801 et seq., and also focused heavily on “economic realities.” The joint employer guidance took a very expansive approach to the entities that potentially could be held liable for wage and hour violations.

The DOL issues Administrator Interpretations Letters to provide cross-industry guidance on wage and hour laws and regulations. Administrator Interpretations Letters are not—strictly speaking—“binding” on courts, although they are generally entitled to deference. Although the two at-issue Administrator Interpretations Letters were in place for a relatively brief period, they were nonetheless influential. Notably, Administrator’s Interpretation No. 2015-1 was cited by U.S. District Court Judge Edward Chen in the O’Connor v. Uber Technologies, Inc. class action pending in the Northern District of California.

In withdrawing the two Obama-era Administrator Interpretations Letters, Secretary Acosta did not indicate whether the DOL under the Trump administration would issue further guidance on joint employment or independent contractors, but this certainly sends a signal that the current administration may take a much narrower view of what constitutes an employer-employee
relationship. In a news release, the DOL stated that withdrawal of these two letters "does not change the legal responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Worker Protection Act, as reflected in the department’s long-standing regulations and case law."

It remains unclear what the lasting implications of the withdrawal will be. We will continue to monitor developments on the federal and state levels regarding joint employment and independent contractor issues.

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