DOL Withdraws Obama-Era Guidance on Joint Employment and Independent Contractors

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On June 7, 2017, the United States Department of Labor ("DOL") announced that it is withdrawing the prior Administration's guidance on joint employment and independent contractors. The Obama Administration had issued Administrator's Interpretations ("AI") in 2015 and 2016 that demonstrated its expansive view of who was an "employer" and "employee" for purposes of compliance under the Fair Labor Standards Act ("FLSA"). "Joint employment" had been broadly defined to capture certain relationships between associated companies and companies that use third parties for labor. Likewise, "independent contractor" had been narrowly defined to include more workers as statutory employees. You can click here (joint employment) and here (independent contractor) for our previous alerts describing the AIs in detail.

Because the AIs were only the DOL's "interpretation" of the law, the recent announcement by Secretary of Labor, Alexander Acosta, does not change the law or the regulations under the FLSA. It does, however, mark a shift in perspective under the Trump Administration. The Obama DOL viewed wage and hour laws as broadly covering companies and workers and had taken an aggressive enforcement position on these issues. The Trump Administration, by withdrawing the AIs, seems to be signaling a different focus.

Notably, the DOL is not the only agency dealing with the issue of "joint employment." The National Labor Relations Board was the first agency to broadly define "joint employment" under federal labor law. This broad definition continues to be the rule of law under the current three-member Board. President Trump has an opportunity right now to appoint two additional members to the NLRB. We will stay tuned to see if his appointments shift the NLRB's interpretation of the law as well.

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