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Department of Labor FLSA Guidance Says Most Workers Are Employees

On July 15, the Wage Hour Division of the U.S. Department of Labor (DOL) issued Administrator's Interpretation No. 2015-1. Significantly for employers, this Administrator's Interpretation states that "most workers are employees under the Fair Labor Standards Act's (FLSA) broad definition."

In the document, the DOL provides guidance on whether a worker is an employee or independent contractor. The analysis focuses on the application of the economic realities test to the FLSA's definition of "employment" as "to suffer or permit to work," discusses each factor in the economic realities test, and provides case law and examples to flesh out its interpretation.

The Supreme Court has interpreted the FLSA's definition of employment as stating an entity suffers or permits an individual to work if, as a matter of economic reality, the individual is dependent on the entity. The economic realities test reviews factors to determine whether a worker is an employee or an independent contractor under the FLSA. In the guidance, the DOL states that no one factor is determinative, but rather, all factors should be applied as indicators of the broader concept of economic dependence. Ultimately, the goal is to determine whether the worker is economically dependent on the employer – and therefore an employee – or whether the worker is in business for himself or herself as an independent contractor.

The economic realities test factors are:

- (1) Is the work an integral part of the employer's business?**
- (2) Does the worker's managerial skill affect the worker's opportunity for profit or loss?**
- (3) How does the worker's *relative* investment compare to the employer's investment?**
- (4) Does the work performed require special skill and initiative?**

(5) Is the relationship between the worker and the employer permanent or indefinite?

(6) What is the nature and degree of the employer's control?

In light of this broad interpretation of an employee, employers should examine and review existing relationships with independent contractors for compliance with the FLSA.

For more information or analysis of the FLSA, please contact [Amy S. Wilson](#) or [Jennifer A. Rulon](#), or any other attorney in the Frost Brown Todd [Labor and Employment](#) practice group.

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