



DOL Withdraws Joint Employment and Independent Contractor Guidance

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Labor Secretary Alexander Acosta announced that the Department of Labor (DOL) has withdrawn its 2015 and 2016 informal guidance on joint employment and independent contractors, effective June 7, 2017. The two guidance memos were issued by the Wage and Hour Administrator of the DOL during President Obama's administration, which focused heavily on issues related to independent contractors and joint employment.

On July 15, 2015, the DOL issued its guidance on independent contractors entitled "The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors." The DOL codified its interpretation of independent contractors and reiterated its use of the "the economic realities test." The DOL explicitly stated its belief that "most workers are employees under the Fair Labor Standards Act's (FLSA) broad definition" and ushered a focus on investigating independent contractor misclassification claims. Frost Brown Todd's previous advisory about the now-withdrawn guidance can be found [here](#).

On January 20, 2016, the DOL issued its guidance on joint employment relationships entitled "Joint Employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act." The DOL took an extremely broad view of joint employment relationships and declared that "the concept of joint employment, like employment generally, 'should be defined expansively.'" Frost Brown Todd's previous advisory about the now-withdrawn guidance can be found [here](#).

The DOL maintains that these two interpretive guidances do not change existing law. The brief [statement](#) issued by the DOL states that the "removal of the administrator interpretation does not change the legal responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Workers

Protection Act, as reflected in the department's long-standing regulations and case law."

Nevertheless, the withdrawal signals the Trump administration is unlikely to pursue aggressive enforcement of misclassification and joint employment issues, which was a focus of the Obama administration.

For more information, please contact [Neal Shah](#), [Tessa Castner](#), or any attorney in Frost Brown Todd's [Labor and Employment Practice Group](#).

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