



DOL Delays Regulations and Withdraws Previously Issued Guidance Documents

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During the past several presidential transitions, it has become a trend for the incoming administration to repeal or delay many regulations and guidance documents issued in the prior administration's waning days. The transition from the Trump administration to the Biden administration has demonstrated that the trend has continued — and likely will continue for the foreseeable future.

One example of this trend is the final rule impacting compensation for tipped employees, which the Department of Labor (DOL) adopted during the final days of the Trump administration. As noted in [our alert discussing this new rule](#), the DOL sought, among other things, to repeal what has become known as the "20% rule," and adopt in its place a more workable solution for employers that have tipped employees. This rule was scheduled to go into effect on March 1, 2021.

Another new rule, scheduled to take effect on March 8, 2021, would have provided significant clarity to employers applying the economic realities test to evaluate whether a worker is an employee entitled to overtime pay, or an independent contractor who is not protected by the overtime requirements of the Fair Labor Standards Act. Following this rule's issuance, the DOL issued an opinion letter [providing significant clarity](#) on the applicability of this rule to owner-operators in the motor carrier industry.

However, after President Biden took office, he directed all federal agencies to freeze pending regulations for additional review and consideration. Following this instruction, the DOL delayed the proposed effective dates of both regulations, which re-opened for public comment through February 17, 2021. Furthermore, the DOL withdrew the owner-operator opinion letter and similar opinion letters on the grounds that they "were issued prematurely because they are based on rules that have not gone into effect."

When — or if — the above regulations become effective remains to be seen. Employers should continue to stay apprised of the evolving DOL policy and guidance under the new Biden administration.

For more information, please contact [Tessa Castner](#), [Kyle Johnson](#), or any attorney in Frost Brown Todd's [Labor and Employment](#) practice group.

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