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DOL Issues New Independent Contractor Rule

The Department of Labor recently issued its final rule on classifying workers as independent contractors (as opposed to employees) under the Fair Labor Standards Act. The rule takes effect March 11, 2024.

The new rule focuses on the economic realities of the work relationship and identifies six factors to consider (none more important than the others):

- The degree to which the employer controls how the work is done.

The more control exercised by the employer, the less likely the worker is truly an independent contractor. The more freedom the worker has to decide when, where and how the work is performed, the more likely they will be considered an independent contractor.

- The worker's opportunity for profit or loss.

As with the control factor, the more freedom the worker has to perform the work more efficiently, the more likely they will be deemed independent. Also, the ability of their worker to perform work for multiple companies at the same time weighs in favor of independence.

- The amount of skill and initiative required for the work.

We expect additional guidance will be issued to flesh out this factor, but believe that the more highly skilled a position, the more likely it can be considered independent. In many circumstances, unskilled manual labor will not qualify.

- The degree of permanence of the working relationship.

Work done on a project basis (e.g., installing a new computer network) is more likely to be considered independent than a worker with a long-term relationship with the company.

- The worker's investment in equipment or materials required for the task.

A truly independent contractor would be expected to provide their own tools and raw materials. If the company provides the hammer and nails, they look a lot more like an employee.

- The extent to which the services rendered are integral to the employer's business.

If the services are only incidental to the business (e.g., janitorial services to an insurance brokerage), they are likely independent. If the worker performs core functions of the business (a CPA in an accounting firm), they are likely an employee.

The new rules are more employee-friendly than the 2021 rules issued by the Trump DOL and should prompt employers to reassess whether workers are properly classified. Misclassification can lead to expensive lawsuits over unpaid wages and overtime, as well as penalties from state and federal tax authorities. As noted, we expect DOL to issue additional guidance on their interpretation, including some which is industry-specific.

Please contact Al Vreeland for additional information regarding independent contractor/worker classification issues. AVreeland@lehrmiddlebrooks.com; (205) 323-9266.