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DOL Pauses Enforcement of Biden-Era Independent Contractor Rule

Late last week, the Trump administration continued its roll-back of President Biden administration issued employment guidance. In this instance, it was a reversion, at least from an enforcement standpoint, of Department of Labor (DOL) guidance regarding the appropriate standard to apply when assessing whether a worker is an employee or an independent contractor.

There has been much back and forth on this subject between the Trump and Biden Administrations. The current rule was issued by DOL's Wage and Hour Division in January 2024 and includes a comprehensive, six-prong economic realities test to determine whether workers are independent contractors. That rule was issued largely to alter a 2021 rule issued during the final days of President Trump's first administration. The Biden-era rule is subject to pending legal challenges in at least three federal forums: the Fifth Circuit, Eleventh Circuit and a Texas district court.

In a May 1st field assistance bulletin (2025-1) issued by our former colleague, Acting Wage Hour Division Administrator Don Harrison, the Wage and Hour Division indicated that it would, effective immediately, halt application of the 2024 rule when conducting Fair Labor Standards Act investigations regarding worker classification. Instead, Wage and Hour will revert to the standard set forth in a July 2008 fact sheet, i.e., Fact Sheet # 13. In a corresponding move, Wage and Hour also issued its first Opinion Letter, FLSA 2025-2, which simply reinstated an Opinion Letter that had been issued during the first Trump administration but withdrawn by the Biden administration in 2021.

The 2008 standard includes seven factors: (1) whether the work provided is integral to a company's business; (2) the permanency of the working relationship; (3) the worker's investment in facilities and equipment; (4) the nature and degree of control by the entity; the worker's opportunity for profit and loss; the amount of initiative, (5) judgment or foresight is required for the worker's success, and (6) the degree of independent organization and operation. According to a statement from the Wage and Hour Division: "This approach provides greater clarity for businesses and workers navigating modern work arrangements while legal and regulatory questions are resolved."

Note that the Department's action did not formally rescind the Biden-era rule, rather the DOL indicated that it was in the process of reconsidering the rule. As such, it is virtually certain that a new formal rule, likely to include significant changes, is forthcoming. With that in mind, we continue to believe that the primary emphasis of the independent contractor analysis should focus on two factors: a worker's control over their work and the opportunity for the worker to profit as a result of personal investment.

Whether a worker is properly classified has far-reaching implications across multiple aspects of employment law including wage and hour, employment authorization, employment tax and social security implications. We will continue to monitor the DOL standard as it evolves subject to political whims.

If you have any questions or would like additional information, please contact Mike Thompson at 205-323-9278 or mthompson@lehrmiddlebrooks.com.