

Client Alert **Employment & Labor**

New Federal Guidance on Employee Classification

The Federal Department of Labor (DOL) recently announced that it has withdrawn its 2015 and 2016 informal guidance on joint employment and independent contractors, effective June 7, 2017.

In the 2015 guidance under the Obama administration, the DOL reiterated its use of the “the economic realities test” to determine whether someone was an independent contractor or an employee. While this test was not new, the surprise at the time was that DOL took the position that “most workers are employees under the Fair Labor Standards Act’s (FLSA) broad definition” and indicated that it would focus on investigating independent contractor misclassification claims. Our previous alert on the 2015 guidance can be found in our [2015 August Client Alert](#).

On January 20, 2016, the DOL issued further guidance on joint employment relationships stating that “the concept of joint employment, like employment generally, ‘should be defined expansively.’” This guidance continued the concept that most people working essentially full time for an employer was entitled to employment protections. Under the new administration, the DOL is clearly indicating that, while the FLSA definitions are not changing, this administration is not going to take an expansive view of these often complex classification issues and is not going to make enforcement a priority as did the Obama administration.

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Employers must be aware however, that classification issues are governed by state as well as federal law, and states such as New Jersey are extremely expansive in their view of assuming an employment relationship, as discussed in our [2015 January Client Alert](#).

The following attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert or other employment and labor issues.

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