The Trump Administration Takes its First Step in Rolling Back Obama Employment Regulations

Article
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On June 7, 2017, the U.S. Department of Labor (DOL) announced the withdrawal of two Obama-era guidance letters that provided direction on joint employer and independent contractor classifications (Administrator's Interpretations No. 2015-01 dated July 15, 2015, on independent contractors and No. 2016-01dated January 20, 2016, on joint employment).

On January 20, 2017, Reince Priebus issued a memorandum to the heads of all federal executive departments and agencies generally instructing those officials to:

- refrain from forwarding any new regulations to the Federal Register;
- withdraw any proposed rules or guidance documents that had not been implemented;
- delay the final implementation of any rules that had been passed but not implemented.

The memorandum stated these actions were being taken to allow the appointment of Department Secretaries "in order to further and more completely consider the legal issues involved." The memorandum halted the implementation of any pending administrative rules of the Obama administration.

The joint employment letter, together with the National Labor Relations Board decision in *Browning-Ferris Industries of California, Inc. 362 NLRB No. 186* (August 27, 2015), presented an expansive review of the joint employer doctrine suggesting that a business could be considered a joint employer even if it had only indirect or unexercised control over hiring. This ruling was particularly troublesome in franchisors.

The independent contractor letter No. 2015-01, imposed a broad interpretation of the Fair Labor Standards Act (FLSA) and provided guidance on the issue of whether a worker is an employee or an independent contractor, and therefore not subject to certain FLSA requirements. This guidance letter had the practical

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effect of re-classifying many workers as employees, not independent contractors, based on FLSA's broad definition of the term "employment."

The DOL has stated that it will "continue to fully and fairly enforce all laws within its jurisdiction and noted that the "[r]emoval of the administrator interpretations does not change the legal responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, as reflected in the department's long-standing regulations and case law."

The withdrawal of these guidance letters does not resolve the confusion surrounding joint employment in the labor law context. The *Browning-Ferris Industries* decision has been appealed to the D.C. Circuit; its resolution is far from certain. Also, during the last congressional session, legislation to clarify the joint-employer definition was proposed, but did not have any traction.

The removal of the guidances also does not solve the conflicting interpretations of joint employment and independent contractor status under various state laws, so employers will not be closer to a bright-line standard on either issue. What the DOL's move shows, however, is that the administration is taking the first steps to roll back the expansive interpretation of the term "employment" that had evolved in recent years and that the Trump DOL-with a Secretary of Labor now in place intends not only to halt, but to undo the activism of the prior administration.

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