

COMPLIANCE BULLETIN

DOL Withdraws Worker Classification Guidance

HIGHLIGHTS

- The DOL has withdrawn its 2015 guidance on worker classification.
- Employers are still required to properly classify workers as employees or independent contractors.
- The withdrawal means that employers must look to tests established by the courts for guidance.

IMPORTANT DATES

June 7, 2017

The DOL withdrew its 2015 administrative interpretation on how to apply the economic realities test for worker classification.

OVERVIEW

On June 7, 2017, the U.S. Department of Labor (DOL) withdrew a 2015 administrative interpretation on classifying workers as employees or independent contractors. The withdrawal became effective immediately.

Despite the withdrawal of this guidance, employers are still required to properly classify their workers. The DOL stated that it “will continue to fully and fairly enforce all laws within its jurisdiction, including the Fair Labor Standards Act.”

The absence of this guidance means that employers must determine how to satisfy tests established by the courts—specifically the economic realities test—when deciding whether an employee or independent contractor relationship exists.

ACTION STEPS

No specific action is required of employers at this time. However, employers using the DOL’s 2015 guidance may have more flexibility in applying the economic realities test when classifying their workers. Employers may want to evaluate whether their current classification procedures are affected by the withdrawal of this guidance.

Provided By:

Touchstone Consulting Group

Worker Classification

Worker classification has a direct impact on employee eligibility for benefits, legal protections (such as minimum wage and overtime rights) and taxation. In general, employment laws, labor laws and related tax requirements do not apply to independent contractors. For this reason, employee misclassification is a concern for the DOL.

However, classifying an individual as either an employee or an independent contractor is not a simple task. No standard test has emerged to determine the true character of an independent contractor relationship. In fact, employers may have to apply various tests to determine how various labor and employment issues affect their workforces. The most common tests include the common law or agency test, the economic realities test, the hybrid test and the IRS test.

Traditionally, the DOL has favored using the economic realities test, which looks at whether a worker is economically dependent on the employer or is in business for himself or herself. According to the DOL, if the worker is economically dependent on the employer, the worker should be protected by employment laws. In addition, employers should be aware that state and local variations of these tests may also apply in certain situations.

Economic Realities Test

The 2015 guidance provided the DOL's interpretation of how the economic realities test should be applied by employers in their worker classification efforts. Withdrawing the 2015 guidance does not abolish the economic realities test nor the DOL's preference of this test for worker classification purposes.

When the DOL published its worker classification guidance in 2015, it did so to encourage a more uniform application of the principles the courts have traditionally used to apply the economic realities test. Generally, under the economic realities test, the more an individual depends financially on an employer, the more likely it is that the individual should be categorized as an employee.

The most common factors used for purposes of the economic realities test are:

1. The degree of the employer's right to control the manner in which work is performed;
2. The degree of skill required to perform the work;
3. The worker's investment in the business;
4. The permanence of the working relationship;
5. The worker's opportunity for profit or loss; and
6. The extent to which the work is an integral part of the business.

By withdrawing the 2015 guidance, the DOL is returning to more reliance on existing judicial interpretations of the law's requirements, rather than providing its own guidance on how employers should follow the law.