

Department of Labor (DOL) Issues Guidance on Independent Contractor vs. Employee status

In Administrator's Interpretation No. 2015-1 (July 15, 2015), the DOL issued guidance on the classification of a worker as an independent contractor or employee. According to the DOL, "most workers are employees." The DOL Interpretation provides that:

The ultimate inquiry under the FLSA is whether the worker is economically dependent on the employer or truly in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee. If the worker is in business for him or herself (i.e., economically independent from the employer), then the worker is an independent contractor.

In a detailed analysis of the "economic realities" test, the DOL emphasized the following factors:

- A. Is the work an integral part of the employer's business?
- B. Does the worker's managerial skill affect the worker's opportunity for profit or loss?
- C. How does the worker's relative investment compare to the employer's investment?
- D. Does the work performed require special skill and initiative?
- E. Is the relationship between the worker and the employer permanent or indefinite?
- F. What is the nature and degree of the employer's control?

"The factors should not be analyzed mechanically or in a vacuum, and no single factor, including control, should be over-emphasized."

While it is not surprising that the DOL would invoke an expansive definition of "employee," in this guidance, the DOL underscored its continued effort to remedy the misclassification of employees as independent contractors. As the DOL just announced:

"We need to ensure the fundamental principal behind work in America — that a fair day's work deserves a fair day's pay. When employers misclassify their employees as independent contractors, often to cut their own costs, those workers are denied the protections of basic labor standards such as minimum wage and overtime, in addition to necessary safety and health protections. Competitors lose out, too, when they can't compete with employers getting ahead by skirting the law. Combatting employee misclassification, particularly where vulnerable workers are at risk, continues to be a high priority for the Labor Department and this administration." [DOL Email Notification of on-line Q & A Session with Secretary of Labor, Thomas E. Perez, at 5:00 p.m. on July 27, 2015.](#)

In light of the DOL's position, employers should obtain legal advice before deciding to classify workers as "independent contractors." For more information and legal advice on this issue, please contact a member of our Labor and Employment Law Practice Group.

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MARSHALL & MELHORN, LLC

Please contact a member of our Labor & Employment Law Practice Group at (419) 249-7100.

Justice G. Johnson, Jr.
johnson@marshall-melhorn.com
419.249.7115

David L. O'Connell
oconnell@marshall-melhorn.com
419.249.7135

Ruth Meacham
meacham@marshall-melhorn.com
419.249.7128

Roman Arce
arce@marshall-melhorn.com
419.249.7111

Michael S. Scalzo
Scalzo@marshall-melhorn.com
419.249.7129

Jennifer J. Dawson
dawson@marshall-melhorn.com
419.249.7139

Margaret J. Lockhart
lockhart@marshall-melhorn.com
419.249.7147

Meghan Anderson Roth
roth@marshall-melhorn.com
419.249.7226

Shawn A. Nelson
nelson@marshall-melhorn.com
419.249.7164

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