

In Pro-Employer Move, Trump Administration Withdraws DOL Guidance Letters

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President Trump's reputation as a no-holds-barred businessman was one of the pillars of his campaign. Six months into office, Trump's administration is showing its pro-business (or pro-employer) tendencies through recent Department of Labor (DOL) guidance. In this instance, it is the recent *withdrawal* of Obama administration guidance, rather than the issuance of new guidance, that demonstrates Trump's and new Labor Secretary Acosta's position. Both guidance withdrawals are decisively pro-employer.

Specifically, on June 7 the [DOL withdrew](#) two significant guidance letters issued during the Obama administration. While DOL guidance letters are not binding law, they give a strong indication of how the DOL interprets the Fair Labor Standards Act (FLSA) and similar federal employment statutes. Importantly, this action also gives an indication how Secretary Acosta will approach labor issues in the future. These indications are important, because Secretary Acosta had a mixed yet largely muted reception from both parties during his confirmation hearings and was endorsed by a number of unions. In particular, he assured Democrats that he would put the interests of workers first. However, these letter withdrawals show that he is certainly mindful of employers' needs as well.

The first withdrawn guidance letter, Administrator's Interpretation No. 2015-1, was first issued in July 2015. It took the general position that most workers are employees rather than independent contractors. The guidance contained a multi-factor test to determine whether a worker was an employee or independent contractor—a test that did not provide a bright line for employers to follow. Instead, the test focused on whether the worker was economically dependent on the employer or was in business for himself. The rescission of this guidance letter, while not dispositive, permits employers with an enhanced ability to argue that workers qualify as independent contractors rather than employees.

The second withdrawn guidance letter, Administrator's Interpretation No. 2016-01, was issued in January 2016. This letter addressed joint employment and how a company and its contractor could be joint employers if the company had a right to control the contractor, even if that right was never exercised. This letter relaxed the previous standard that required some level of control over the contractor to actually be exercised over the contractor. With the DOL's withdrawal of guidance, it appears that the more relaxed standard will again apply.

These early signs should be welcome news for employers. Both of these issues imposed greater liabilities on businesses as it relates to their workers. While Acosta may have touted a workers first mentality during the confirmation process, the Trump administration's pro-business mentality is still managing to shine through.

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