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Employment NewsFlash

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New Contractor Classification Win for Employers

The U.S. Department of Labor (DOL) gave a win to employers in a new, business-friendly Wage and Hour Opinion Letter (<u>https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_29_06_FLSA.pdf</u>). The Opinion Letter examined classification of workers as independent contractors versus employees.

"An important role of the U.S. Department of Labor is to ensure that employers who want to do the right thing have clear compliance assistance," said Keith Sonderling, Acting Administrator of the DOL's Wage and Hour Division. "Today, the U.S. Department of Labor offers further insight into the nexus of current labor law and innovations in the job market."

The DOL concluded that "as a matter of economic reality" workers for a virtual marketplace company operating in the "on-demand" or "sharing" economy were appropriately classified as independent contractors. The Opinion Letter offers critical, detailed guidance to virtual marketplace companies seeking to continue independent contractor classifications.

The Opinion Letter also offers a roadmap for every employer. The DOL looked to the "circumstances of the whole activity," as opposed to prior guidance emphasizing worker day-to-day activities. Highlighting economic independence as the key marker of independent contractor status, the DOL cited six factors in its fact-specific analysis:

- The nature and degree of the potential employer's control;
- The permanency of the worker's relationship with the potential employer;
- The amount of the worker's investment in facilities, equipment or helpers;
- The amount of skill, initiative, judgment or foresight required for the worker's services;
- The worker's opportunities for profit or loss; and
- The extent of integration of the worker's services into the potential employer's business.

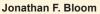
Like the DOL, the National Labor Relations Board (NLRB) recently returned to a more business-friendly approach (<u>https://www.nlrb.gov/news-outreach/news-story/</u>

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<u>nlrb-returns-long-standing-independent-contractor</u> <u>standard</u>) to contractor status.

The recent actions by the DOL and NLRB represent victories for employers seeking to operate in the modern economy. Employers should review the new DOL and NLRB opinions in connection with Internal Revenue Service Guidance (<u>https://www.irs.gov/businesses/</u> <u>small-businesses-self-employed/independent-contractor-</u> <u>self-employed-or-employee</u>), additional state law requirements, and advice from legal and tax advisors.







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