DOL WITHDRAWS ADMINISTRATOR'S INTERPRETATIONS ON JOINT EMPLOYMENT AND INDEPENDENT CONTRACTORS

Date: 9 June 2017

Labor, Employment and Workplace Safety Alert

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On June 7, 2017, the U.S. Department of Labor withdrew its controversial written interpretations addressing joint employment and the misclassification of employees as independent contractors. These informal guidance documents, which were issued by the Wage and Hour Division Administrator during the Obama Administration, were criticized by some for taking an unduly broad view of the employment relationship under the Fair Labor Standards Act (FLSA). For further background on these administrator's interpretations, see our articles at http://www.klgates.com/department-of-labor-announces-broad-interpretation-of-joint-employment-02-12-2016/ (joint employment) and http://www.klgates.com/dol-issues-new-guidance-on-independent-contractors-07-23-2015/ (independent contractors).[1] In Wednesday's announcement withdrawing the guidance documents, the Department of Labor made a point of stating that the withdrawal of these documents does not change the legal responsibilities of employers, as reflected in longstanding regulations and case law. This is an important point because, while today's announcement is welcome news for employers and may signal less extreme positions by the Department of Labor, employers should still be mindful of potential liability associated with joint employment and independent-contractor classifications. In addition to DOL enforcement (which the agency made clear will continue), a number of states have been active in their efforts to curb employee misclassification, and employees also have a private right of action under the FLSA and various state laws.

Notes:

[1] In addition, a recorded webinar addressing the classification of independent contractors is available on the K&L Gates HUB at http://www.klgateshub.com/details/?media=c751e4e6-600e-445a-ab06-2bab42129052, and an article addressing independent contractors in the gig economy, published in *Computer Law Review International*, is available at http://www.klgates.com/files/Publication/04dcde30-9c10-4003-b663-f7f5f2cdec32/Presentation/PublicationAttachment/805ddc72-69b2-426b-ad51-fe92be45434e/CLRI_2016.pdf.

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