

USDOL withdraws 2015 and 2016 informal guidance on joint employment and independent contractors

On Wednesday, June 7, 2017, the U.S. Department of Labor's Office of Public Affairs announced the withdrawal of recent guidance regarding joint employment and independent contractors.



OPA News Release:

June 7, 2017 [[link](#)] WASHINGTON – U.S. Secretary of Labor Alexander Acosta announced the withdrawal of the U.S. Department of Labor's 2015 and 2016 informal guidance on joint employment and independent contractors. Removal of the administrator interpretations does not change the legal responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, as reflected in the department's long-standing regulations and case law. The department will continue to fully and fairly enforce all laws within its jurisdiction, including the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

The [Administrator Interpretation Letters – Fair Labor Standards Act](#), which have been withdrawn are:

- **FLSA 2015-1:** "The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors"

- **FLSA 2016-1:** “Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act”

What does this mean for employers?

For employers, this means:

- Joint employment and independent contractor status are no longer reviewed by the DOL under these previous Administrator’s Interpretations
- Employees no longer have FLSA 2015-1 and FLSA 2016-1 to cite before the courts.

However, the Administrator’s Interpretations relied upon case law, statutes and regulations that are still good law. Further, how the courts define joint employment and identify misclassified independent contractors has not changed because the common law, statutes and regulations are still in effect.

The definition of joint employment may depend on the state and federal Circuit Court where the employer is located. Independent contractor status is also defined by the FLSA, common law, statutes, and regulations as well as state law. Some states may have a different standard for independent contractors and joint employment.

Employers should consult with their attorney regarding questions about classifying independent contractors, joint employment and state laws that may vary. Although the removal of the DOL Administrator’s Interpretations is not a change in the law, it may indicate a change in DOL enforcement in these two areas. Stayed tuned for more information or changes from the DOL.