

Does Your Organization Use Independent Contractors? What You Don't Know Could Hurt You

On July 15, 2015, the U.S. Department of Labor ("DOL") issued an Administrator's Interpretation that provides additional guidance on the classification of workers for purposes of the Fair Labor Standards Act ("FLSA"). According to the DOL, an increasing number of workplaces are misclassifying workers as independent contractors. Employers who improperly classify workers as independent contractors may face serious consequences, including tax penalties and additional penalties associated with health care and worker's compensation laws. As a result, it is vital that employers properly classify all workers.

The Administrator's Interpretation provides guidance for the proper application of the "economic realities test," which is a multi-factor test used to determine whether a worker is an employee or an independent contractor. The DOL takes the position that most workers are actually employees when the economic realities test is applied in view of FLSA's broad definition of "employ." The factors that constitute the economic realities test may vary, but generally consist of the following:

- Does the worker perform work that is "an integral part of the employer's business"?
- Does the worker have an "opportunity for profit or loss"?
- How does the worker's investment compare to that of the employer?
- Does the worker perform work that requires "special skill and initiative"?
- Is there a permanent or indefinite relationship between the worker and the employer?
- What degree and nature of control does the employer have over the worker?

Where the factors provide an overall indication of the worker's economic dependence on the organization, the worker is most likely an employee, not an independent contractor.

The Administrator's Interpretation serves as a reminder to employers that workers need to be properly classified. Employers should reevaluate the status of

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their independent contractors to determine whether they are properly classified. Employers should make this reevaluation a priority in light of the DOL's aggressive pursuit of employers with misclassified workers.

If you have any questions about the classification of workers, please contact [Katie Triska](#), [Rob Driscoll](#) or your Reinhart attorney.

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