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Joint Employment Update

DOL Withdraws Employee-Friendly Guidance

Effective June 7, 2017, the U.S. Department of Labor (DOL) withdrew a pair of Administrator's Interpretations about joint employment and employee classification under the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). DOL said in its announcement of the withdrawals that the "[r]emoval 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."

As we wrote last year, the joint employment Administrator's Interpretation took an expansive view of potential joint employment. It discussed both horizontal (two companies that are closely associated or related with respect to the employee) and vertical joint employment (a person employed by one intermediary employer, but who is also economically dependent on another employer with respect to the work performed for the intermediary).

The impact of DOL's withdrawal of these Administrative Interpretations is that parties to an employment litigation lawsuit cannot depend on the withdrawn interpretations in court. They will have to rely on the federal regulations themselves, and on any previous court decisions.

It is not clear at this time whether the Trump Administration will revise or eliminate any federal regulations regarding joint employment.