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Labor and Employment Alert: Changing Course: Department of Labor Withdraws Recent Guidance on Independent Contractors and Joint Employers

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Today, the U.S. Department of Labor (DOL) announced that it is withdrawing two Administrator's Interpretations on joint employment and independent contractors that were issued under the Obama administration. Both interpretations had the potential to increase employers' liability for misclassification and for wage-hour penalties for being deemed a joint employer.

In 2015, the DOL released an Administrator's Interpretation discussing misclassification of employees as independent contractors. There, the DOL took the position that "most workers are employees under the Fair Labor Standard Act's broad definitions." And so, the DOL reasoned, this intended "expansive coverage for workers" had to be considered when determining whether a worker would be deemed an employee or an independent contractor. In 2016, the DOL released an Administrator's Interpretation on joint employment. There, the DOL took the position that joint employment is "more common" and "should be defined expansively." Consequently, the DOL "may consider joint employment to achieve statutory coverage, financial recovery [i.e., the deep pocket], and future compliance, and to hold all responsible parties accountable for their legal obligations."

Despite the DOL's withdrawal of these Administrator's Interpretations, misclassification and joint employment will continue to be important issues for employers. For example, in January 2017, the Fourth Circuit Court of Appeals recently created its own test for determining joint employment under the Fair Labor Standards Act. And in May 2017, the New York City "Freelance Isn't Free Act" became effective. This law significantly enhances protections for the city's 1.3 million freelance workers (in other words, independent contractors). Contact your Vorys lawyer if you have questions about independent contractors, misclassification issues, or joint employment.