



LABOR & EMPLOYMENT PRACTICE GROUP

Meltzer Lippe is home to a large, experienced Labor and Employment Law Practice Group.

We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.

Exclusively representing management, our attorneys are indispensable advisors to senior executives and the HR team. While some business owners and companies rely on our experience and depth to supplement in-house general counsel expertise, others lean on us to resolve their labor disruptions or employ our tenacity in collective bargaining.

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THE UNITED STATES DEPARTMENT OF LABOR FINALIZED CHANGES TO THE INDEPENDENT CONTRACTOR CLASSIFICATION FOR 2024

On January 10, 2024, the United States Department of Labor (“DOL”) published a final rule providing guidance on how to determine whether a particular individual is an employee or independent contractor under the Fair Labor Standards Act (“FLSA”). As such, employers should act quickly to ensure their pay practices reflect these changes, which will become effective on March 11, 2024. Whether a worker is an employee or independent contractor is a matter of “economic reality,” analyzed under the totality of the circumstances, based on the following six factors:

- Opportunity for profit or loss depending on managerial skill;
- Investment by the worker and the potential employer;
- Degree of permanence of the work relationship;
- Nature and degree of control;
- Extent to which the work performed is an integral part of the potential employer’s business; and
- Skill and initiative.

The DOL’s new rule clarifies no factor or set of factors from the above list has a predetermined weight and additional factors may be relevant if such factors indicate whether the worker is in business for themselves (i.e., an independent contractor), as opposed to being economically dependent on the employer for work (i.e., an employee under the FLSA).

Misclassification under the FLSA is a serious issue and may subject the employer to significant exposure, including the requirement to pay overtime compensation, liquidated damages, and attorney’ fees. Employers should review their classifications and payroll practices to ensure any “independent contractors” are properly classified. Given the nuances of determining whether a worker is properly classified as an “employee” or “independent contractor,” employers should speak with experienced employment attorneys. Employers with questions relative to the foregoing are encouraged to reach out to your Meltzer Lippe advisor or contact Danielle E. Mietus or Nicholas P. Melito at Meltzer, Lippe, Goldstein & Breitstone, LLP.