

LABOR AND EMPLOYMENT LAW INFORMATION MEMO

MAY 6, 2021

The U.S. Department of Labor Withdraws Its Independent Contractor Regulations

On May 6, the U.S. Department of Labor (USDOL) withdrew its [final regulations](#) that would have revised the standard for determining whether a worker is an employee covered under the Fair Labor Standards Act (FLSA) or an independent contractor who is not subject to the FLSA's minimum wage and overtime requirements. According to the USDOL, the independent contractor rule that was withdrawn "is inconsistent with the FLSA's text and purpose, and would have a confusing and disruptive effect on workers and businesses alike due to its departure from longstanding judicial precedent."

The USDOL's independent contractor regulations were published on January 7 and were initially supposed to become effective on March 8. The effective date of the regulations was then delayed until May 7, and the USDOL published a proposed rule on March 12 to withdraw the regulations. After receiving more than 1,000 comments on its proposed withdrawal of its independent contractor regulations, the USDOL [formally withdrew those regulations](#) on May 6.

The result of this withdrawal is that the USDOL will likely continue to take an expansive view of employee status under the FLSA. Even if the final regulations had taken effect on May 7 as scheduled, those regulations would have only been applicable to the independent contractor analysis under the FLSA, and would not have affected the independent contractor analysis under New York wage and hour laws. There are many branches of the New York State Department of Labor (such as the Division of Labor Standards, the Unemployment Insurance Division, and the Workers' Compensation Board) that have historically taken a more expansive view of employee status under New York law. So, for employers in New York, the USDOL's withdrawal of its regulations should not drastically change the manner in which potential independent contractor relationships are analyzed. Employers should continue to be cautious when classifying an individual worker as an independent contractor and should consult with legal counsel to assess the risks of such a classification.

If you have any questions about the information presented in this memo, please contact [Subhash Viswanathan](#), any [attorney](#) in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.



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