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Federal Department of Labor Announces Final Rule on Independent Contractor Status under Fair Labor Standards Act

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The Department of Labor (the “DOL”) recently announced a final rule clarifying the standard for employee versus independent contractor under the Fair Labor Standards Act (the “FLSA”). The effective date of the new DOL final rule is March 8, 2021.

In the final rule, the DOL:

(1) reaffirms an “economic reality” test to determine whether an individual is in business for him or herself (should be considered an “independent contractor”) or is economically dependent on a potential employer for work (should be considered to be an “employee” under the FLSA);

(2) identifies and explains two “core factors” that are the most probative of the question whether a worker is economically dependent on someone else’s business or is in business for himself or herself – (a) the nature and degree of control over the work and (b) the worker’s opportunity for profit or loss based on initiative and/or investment; and

(3) identifies three other factors that may serve as additional guideposts in the analysis of a worker’s employment status, particularly when the two core factors do not point to the same classification – (a) the amount of skill required for the work, (b) the degree of permanence of the working relationship between the worker and the potential employer, and (c) whether the work is part of an integrated unit of production.

The newly issued DOL final rule can be found here at this link -- <https://public-inspection.federalregister.gov/2020-29274.pdf>.

The members of our Firm’s Trucking & Logistics Group believe that this new DOL final rule will assist in preserving the viability of the Independent Owner Operator Model for the Trucking & Logistics Industry. Should any of our clients or transportation industry related firms have any questions or require any additional information on the impact of the DOL final rule, please do not hesitate to contact any member of our firm’s Trucking & Logistics Group.



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