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# The Department of Labor Withdraws Obama-Era Independent Contractor and Joint Employer Guidance

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The U.S. Department of Labor has indicated that the department will move in a new, more employer-friendly direction, leaving many businesses feeling hopeful.

On June 7, 2017, the United States Department of Labor issued a press release rescinding the Department's 2015 administrator's interpretation memorandum regarding Independent Contractor classification under the Fair Labor Standards Act ("FLSA") and its 2016 administrator's interpretation memorandum regarding joint employer status under the FLSA and the Migrant and Seasonal Agricultural Workers Protection Act. The press release was short and to the point, stating:

"U.S. Secretary of Labor Alexander Acosta today announced the withdrawal of the U.S. Department of Labor's 2015 and 2016 informal guidance on joint employment and independent contractors. Removal 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. The department will continue to fully and fairly enforce all laws within its jurisdiction, including the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act."

For practical purposes, rescinding the interpretation memoranda does not change the law, but reflects the current administration's disagreement with and intent to repeal interpretations and guidance issued by the Obama administration's Department of Labor. Both interpretation memoranda were roundly criticized by the business community as being anti-business and stagnating job growth at the time they were issued.

In the case of the joint employer guidance, the now former interpretation was adopted by the National Labor Relations Board ("NLRB") in the *Browning-Ferris* case in 2015. That case is on appeal, but at this point is still binding in cases before the NLRB. *Browning-Ferris* essentially revived joint employer standards, which had been modified over the last 30 years, making it easier to find that two companies are joint employers. (See *NLRB Again Upends Long-standing Precedent in Creating Broad New Joint-Employer Standard*, Miller Canfield Employer Alert, August 31, 2015). This interpretation has been sharply criticized especially by franchise associations, who have asserted that under the Obama administration's interpretation all franchisors would be considered joint employers with franchisees.

Again, while the withdrawal of the administrator's interpretation memoranda does not change current law, it signals the Trump Department of Labor's first steps to overturn Obama-era Department of Labor initiatives. We will keep you informed as the Trump Department of Labor continues to take actions to move away from Obama-era precedent.