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ARE YOUR PAY PRACTICES FOR INDEPENDENT CONTRACTORS FEDERALLY COMPLIANT?

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Why this matters and how it could impact your workplace

[In a memo released Wednesday](#), the United States Department of Labor (DOL) expressed concern that misclassification of employees as independent contractors is rampant in the United States. Dr. David Weil, administrator for the [U.S. Department of Labor's Wage and Hour Division](#), also raised similar concerns in a [blog post](#).

Why is this a problem for employers? Many misclassified independent contractors are, in fact, non-exempt employees. Under the Fair Labor Standards Act (FLSA), non-exempt employees are guaranteed minimum wage, and overtime for working over 40 hours in a week. Independent contractors receive no such guarantees. Thus, misclassification may portend an FLSA lawsuit. Additionally, misclassification can lead to employee-benefits issues, problems with workers' and unemployment compensation, and IRS red flags.

The DOL guidance lists six factors, which it says reflect the "economic realities" of when the worker is an employee or an independent contractor. However, none of these factors is controlling and each situation stands on its own facts and circumstances. Indeed, it can be downright confusing!

Unfortunately, the misclassification of independent contractors as employees is low-hanging fruit for the DOL. On the heels of [new overtime rules proposed earlier this month](#), the stars are lining up for a difficult 2016 for non-compliant workplaces. If you suspect that you may have issues with pay practices, or simply want to ensure compliance with the FLSA, Dilworth Paxson's experienced Labor and Employment Practice Group is here to help. Should you wish to schedule an audit of your pay practices, please do not hesitate to contact us.