



DOL Withdraws Three Opinion Letters on Wage and Hour Rules, SHRM, ft. Kartikey Pradhan

Kartikey Pradhan, attorney in the KD San Francisco office, was quoted in Lisa Nagele-Piazza's SHRM article on independent contractor status under FLSA.

President Joe Biden's administration recently withdrew three opinion letters addressing tipped workers and independent-contractor status under the Fair Labor Standards Act (FLSA). The letters were issued in the last days of the prior administration.

"These letters were issued prematurely because they are based on rules that have not gone into effect," according to the U.S. Department of Labor (DOL).

DOL rules on paying tipped employees and classifying workers as independent contractors were finalized prior to Biden's inauguration but were slated to take effect in March. On Biden's first day in office, the White House asked federal agencies to freeze proposed and pending regulations to give new leaders time to review pending rules.

The DOL analyzed the facts of each letter under a final rule that was scheduled to take effect on March 8. The rule would apply an economic-reality test to determine employment classification, primarily considering the nature and degree of control over the work and the worker's opportunity for profit or loss based on initiative and investment. Three other factors would serve as guideposts in determining employment status:

- The amount of skill required for the work.*
- The degree of permanence of the working relationship between the worker and the potential employer. Whether the work is part of an integrated unit of production (or the individual works under circumstances analogous to a production line).*
- The rule is now on hold pending review from the current administration.*

Kartikey Pradhan, an attorney with Kaufman Dolowich & Voluck in San Francisco, noted that Biden's administration may take additional steps at the federal level to make it more difficult for businesses to classify workers as independent contractors.