

In a couple of victories for manufacturers, today, Labor Secretary Acosta rescinded the 2016 Administrator's Interpretation regarding independent contractors explaining how the agency would determine whether an employer misclassified an employee as an independent contractor. The memorandum also broadly defined the term employee and laid out an "economic realities" test to take into account whether the independent contractor's work was an integral part of the employer's business and whether the worker's relationship with the employer was permanent or indefinite.

Secretary Acosta also rescinded a 2016 interpretative memorandum on joint employer under the Fair Labor Standards Act. The 2016 guidance outlined a test similar to the standard set forth by the National Labor Relations Board in the Browning Ferris case by asking how much control or supervision a host business had over another; how long the business relationship lasted; whether the nature of the work was repetitive and rote; whether the work was integral to the business; whether the work was performed on the premises owned by the business; and whether the business performed administrative functions.

These rescissions are effective immediately.

Additionally, the Department of Labor announced in the next couple weeks it will be releasing a request for information (RFI) on the overtime rule finalized by President Obama's Administration. This rule is currently enjoined by a federal court in Texas, but would raise the salary for those employees exempt from overtime pay to \$47,476 and would tie future increases to the Consumer Price Index.