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EMPLOYER LAW BLOG

Texas Federal Court: Trump-Era Independent Contractor Regulation Is Effective

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On March 14, 2022, the United States District Court for the Eastern District of Texas issued an order reviving a Department of Labor ("DOL") rule on independent contractors that had been finalized during the Trump presidency but delayed and eventually withdrawn during the Biden presidency before it ever went into effect.

Background

The Trump-era independent contractor rule was set to go into effect on March 8, 2021. It was set to revamp and reorient the test for how the DOL and courts decided whether workers were employees or independent contractors. Such distinction is critical under wage and hour laws: it determines the applicability of significant legal rights and obligations under the Fair Labor Standards Act ("FLSA"), such as payment of overtime and employer recordkeeping requirements.

Many companies welcomed the Trump-era rule as it appeared to present a simpler standard for deciding who may qualify as an independent contractor. For decades, the DOL and courts have applied several versions of a multi-factor, fact-intensive "economic realities" test to decide this question. Critics of the test have lamented its inconsistent application across different jurisdictions.

The Trump-era rule did not necessarily change the overarching principle involved in the determination: whether, as an economic reality, the worker is dependent upon a particular business or is in business for him or herself. Instead, it reduced the factors considered in such inquiry to five, while giving emphasis and greater weight to two "core factors" in particular: (1) the nature and degree of the worker's control over the work; and (2) the worker's opportunity for profit or loss.

However, before this new rule could go into effect, the Biden administration stepped in and issued two rules to effectuate its delay and eventual withdrawal.

Court's Decision

That leads us to this lawsuit. Plaintiffs—a group of associations and interest groups—sued to challenge the two rules passed under the Biden administration.

In her March 14, 2022 summary judgment order, District Judge Maria Crone concluded the two rules passed during the Biden presidency—one to delay and one to withdraw the Trump-era rule—were unlawful under the Administrative Procedure Act ("Act").

The Court took issue with several aspects of the process used to stop this rule from going into effect, one of which was a failure to provide a meaningful opportunity for comment on delaying it. According to the Court, the Biden administration's desire to repeal the rule did "not constitute an emergency, or further, meet the high bar necessary for good cause" for a shortened comment period.

The Court also criticized the attempt to restrict commentary to the issue of suspension alone (as opposed to substantive issues about the independent contractor rule itself), as well as the agency's failure to consider alternatives consistent with the Trump-era rule before withdrawing it. For example, the Court noted the DOL could have considered adding factors to the rule (if it thought five was too few) or removing emphasis or weight given to anyone or more of them (if it thought all were equally important). But, according to the Court, because the DOL did not even consider such alternatives, its rule withdrawal was arbitrary and capricious.

Indeed, the Court recognized the Trump-era rule "was promulgated as a response to [confusion and] uncertainty [resulting from varying court decisions] and sought to provide clarity to the economic realities test." It continued, "in the absence of a uniform regulation that is consistent throughout the nation, a worker's classification as an independent contract or an employee is dependent on the happenstance of geography, *i.e.*, the judicial circuit in which the worker resides or works."

Takeaway

It remains to be seen what significance this decision will ultimately have. Spanning 41 pages, the order was thorough. It is unclear at this time whether the DOL will appeal the decision to the Fifth Circuit or whether it will engage in appropriate rulemaking to change or withdraw the Trump-era rule. It may do both. For now, however, the Trump-era has been ruled to have gone, and remain, in effect. Stay tuned for further developments.