

Not So Fast: DOL Freezes Rules That Have Not Yet Become Effective and Rescinds Opinion Letters

By Aretta Bernard & Stephanie Olivera Mittica

**This development supersedes Roetzel's previous alert on this topic on January 19, 2021.*

On January 20, 2021, the Biden administration issued a regulatory freeze memorandum requesting that executive departments and agencies delay the effective date of any non-emergency rule published but that had not yet become effective pending review by the new administration. As a result of this regulatory freeze memorandum, yesterday, the Department of Labor withdrew three opinion letters that were issued in the final days of the Trump administration. These opinion letters are:

- FLSA2021-4, which addressed whether a restaurant may institute a tip pool under the Fair Labor Standards Act that includes both servers, for whom the employer takes a tip credit, as well as hosts and hostesses, for whom a tip credit is not taken;
- FLSA2021-8, addressing whether certain distributors of a manufacturer's food products are employees or independent contractors under the FLSA; and
- FLSA2021-9, addressing whether requiring tractor-trailer truck drivers to implement safety measures required by law constitutes control by the motor carrier for purposes of their status as employees or independent contractors under the FLSA, and whether certain owner-operators are properly classified as independent contractors.

According to the Department of Labor, these opinion letters were being withdrawn because they were issued prematurely, based on rules that have not gone into effect. Specifically, as it relates to these opinion letters, the Department of Labor's statement refers to the Final Rule on Independent Contractor Status Under the Fair Labor Standards Act and the Final Rule on Tip Regulations Under the Fair Labor Standards Act, which were both set to go into effect in early March 2021. The future of these Rules are now pending review in the hands of the new administration. The rescinded opinion letters may not be relied upon as statements of the Department of Labor policy as of the date of the withdrawal on January 26, 2021.

If you have any questions, please feel free to contact us.

Doug Spiker
Practice Group Manager
Employment Services
216.696.7125 | dspiker@ralaw.com

Karen Adinolfi
330.849.6773 | kadinolfi@ralaw.com

Aretta Bernard
330.849.6630 | abernard@ralaw.com

Michael Brohman312.582.1682 | mbrohman@ralaw.com**Amanda Connelly**614.723.2012 | aconnelly@ralaw.com**Monica Frantz**216.820.4241 | mfrantz@ralaw.com**Doug Kennedy**614.723.2004 | dkennedy@ralaw.com**Nancy Noall**216.820.4207 | nnoall@ralaw.com**Barry Freeman**216.615.4850 | bfreeman@ralaw.com**Morris Hawk**216.615.4841 | mhawk@ralaw.com**Paul Jackson**330.849.6657 | pjackson@ralaw.com**Stephanie Olivera Mittica**330.849.6671 | solivera@ralaw.com**Nathan Pangrace**216.615.4825 | npangrace@ralaw.com