

Attorney's React To DOL Misclassification Guidance, Law360, ft. Keith J. Gutstein

Keith J. Gutstein, partner at Kaufman Dolowich & Voluck, LLP in Woodbury, NY was quoted in a Law360 roundup of analysis on the Department of Labor's guidance on employees vs. independent contractors.

On Wednesday, July 15th, the U.S. Department of Labor issued guidance on how to determine whether a worker is an independent contractor or an employee under the Fair Labor Standards Act. The misclassification guidance says most workers qualify as "employees" under the FLSA's expansive definitions. Attorneys tell Law360 why the guidance is significant.

Keith J. Gutstein said, "The Administrator's Interpretation issued by the Department of Labor emphasizes that the economic realities test is to be used when determining whether a worker is an employee or an independent contractor. According to the interpretation, the Supreme Court and circuit courts of appeals have applied the multifactor test when presented with this issue. While the test discussed in the interpretation is not new, the conclusion, which states that under the FLSA, 'most workers are employees,' is what is most glaring. It is this conclusion that will likely have the biggest impact on current and future Department of Labor investigations."