US DOL Releases Independent Contractor Misclassification Guidance

This morning, the US Department of Labor (“DOL”) released its anticipated guidance on independent contractor misclassification under the Fair Labor Standards Act (“FLSA”). In the Guidance, the DOL pushes for a more expansive reclassification of independent contractors by stating the “economic realities” test used for reclassification should be viewed in light of the broad definition of “employ” under the FLSA. Properly viewed in this light, according to the DOL, “most workers are employees under the FLSA.” The DOL’s effort to informally broaden the FLSA’s reach and shift the focus of the economic realities test stands to directly affect the transportation industry. For example, case law applying the current form of the test generally upholds the independent contractor status of owner operators, and those cases could be weakened if the DOL’s Guidance finds support. Importantly, the Guidance does not carry the force of a regulation, statute, or court decision. The Guidance nevertheless makes the DOL’s position clear, and at the very least, motor carriers can expect increased audit activity.

For additional information on the Guidance, US DOL reclassification efforts, and independent contractor status, please contact Greg Feary (gfeary@scopelitis.com), Jim Hanson (jjhanson@scopelitis.com), David Robinson (drobinson@scopelitis.com) or Adam Smedstad (asmstedad@scopelitis.com).