

DOL to Require Employer Reports on Labor Law Compliance

By Judd H. Lees

The federal Department of Labor announced recently that, as part of its effort to increase employer compliance with wage and hour and safety laws, it will implement administrative rules requiring submittal of written employer plans to enforcement agencies in areas of concern. The draft requirements are intended to primarily target the restaurant, discount retailing, coal mining, and construction industries, which are viewed as problem areas for wage violations, including independent contractor misclassification, as well as safety violations. Employers will be asked to put together written plans on how they intend to identify and avoid safety hazards in the workplace and how the plans are to be implemented and maintained. With regard to wage and hour issues, employers will be required to put together written explanations of why they consider a worker an independent contractor and provide that written explanation to the worker.

Business groups are obviously unhappy with the announced direction since it adds burdens to both employers preparing the plans, as well as the Department reviewing them to determine their adequacy. The nature and timing of the proposed reporting requirements are somewhat uncertain since the Department's proposed rules are still being drafted and, under governing administrative procedures laws, employers will have the opportunity to respond before final issues are ruled. It is estimated that the requirements are more than a year away.

This is yet another effort, similar to that in the area of immigration law, to create mechanisms for "desktop audits" in which employer compliance can be reviewed in the comfort of agency offices. Employers would be well advised to prepare for the impending rules by engaging in self-audits in these areas of concern.