DOL Proposes Major Changes to Employee and Independent Contractor Classification Rules

On February 26, the U.S. Department of Labor (DOL) published a proposed rule that would fundamentally reshape how employers determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA) and related federal laws. The proposed rule would rescind a 2024 Biden-era final rule and replace it with an analysis similar to the one adopted by the DOL in 2021, with a few modifications.

According to the DOL, the proposed rule is designed to help workers and employers "better understand how to determine when a worker is an employee and when the worker may be classified as an independent contractor" under federal wage and hour laws.

The proposed rule reaffirms the long-standing "economic reality" test to determine whether a worker is an employee or an independent contractor. The ultimate inquiry is whether, as a matter of economic reality, the worker is **economically dependent on the employer for work** (employee) or is **in business for him- or herself** (independent contractor).

One of the most significant features of the proposed rule is its identification of two "core" factors that are the most probative of whether a worker is economically dependent on an employer: (1) the nature and degree of control over the work, and (2) the worker's opportunity for profit or loss. In addition to the two core factors, the proposed rule identifies three other factors that serve as "additional guideposts" but are less probative in the analysis: (3) the amount of skill required for the work, (4) the degree of permanence of the working relationship, and (5) whether the work is part of an integrated unit of production.

However, the two core factors "typically carry greater weight in the analysis than any other factor," and if both point toward the same classification – whether employee or independent contractor – there is a substantial likelihood that is the accurate classification.

Importantly, the proposed rule emphasizes that actual practice is more relevant than what may be contractually or theoretically possible. In particular, requiring a worker to comply with legal obligations, satisfy health and safety standards, carry insurance, or meet contractually agreed-upon deadlines or quality control standards does not constitute control that makes the worker more likely to be an employee. This represents a significant shift back toward the analytical framework of the 2021 rule, with its emphasis on the two core factors that typically carry greater weight in the employee versus independent contractor analysis. If finalized as proposed, the rule would provide greater clarity and predictability for employers and workers while maintaining robust protections for employees under federal wage and hour laws.

Employers should remember that while this proposed rule expressly addresses federal law only in the context of the FLSA, it is a useful guidepost for classification determinations in other contexts to the extent it is finally adopted. Indeed, in contexts outside of the FLSA and in the application of certain federal laws that turn on the classification of contractor or employee, different legal tests will arguably apply to this classification. Additionally, many states have their own worker classification standards for purposes of determining employee versus contractor status outlined in state statutes and state court decisions or common law. As an example, Ohio has a statutory test for determining employee versus contractor status in the context of unemployment and then applies common law/court decisions where that classification is otherwise relevant under state law. Additionally, many states apply an “ABC” test through state statute or common law, which as a general rule, focuses on control and direction of work, whether the work being performed is outside the usual course of the business of the company, and whether the worker is engaged in an independent trade, occupation, profession, or business. Employers need to remain mindful of the various applicable legal standards that may apply to this classification issue of employee or contractor depending upon context.

The deadline for submitting public comments on this proposed DOL rule is April 28, 2026, at 11:59 p.m. ET. Employers and other interested parties may submit comments electronically through the Federal eRulemaking Portal, using Regulatory Information Number (RIN) 1235-AA46 to identify the proposed rule. The proposed rule does not specify a definitive effective date, as that will depend on the rulemaking process and any final rule that is adopted.

FOR MORE INFORMATION

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