

**(EMPLOYEE OR INDEPENDENT CONTRACTOR)**  
**U.S. DEPARTMENT OF LABOR (DOL)**  
**RULE BECOMES EFFECTIVE**  
**MARCH 11, 2024**

This firm was instrumental regarding the 2021 IC Rule when it submitted written comments on behalf of its transportation and motor carrier clients concerning whether certain workers are employees or independent contractors under the Fair Labor Standards Act (FLSA), when the U.S. Department of Labor adopted our proposed two “Core Factors” as part of the worker classification analysis.

On January 10, 2024, the Biden Administration announced returning to the long-used “totality of the circumstances” standard which goes into effect on March 11, 2024. The new Rule by the DOL returns to the six-factor test, with no one factor presumed to carry more weight than the other. The factors that will be used in this analysis are:

- (1) The opportunity for profit or loss depending on management skill;
- (2) Investments by the worker and potential employer;
- (3) The degree of performance of the work relationship;
- (4) The nature and degree of control over performance of the work and working relationship;
- (5) The extent to which the work performed is an integral part of the potential employer’s business; and
- (6) The skill and initiative of the worker.

The Final Rule states that “economic dependence is the ultimate inquiry for determining whether a worker is an “independent contractor or an employee.” The DOL’s independent contractor Final Rule only defines the independent contractor status under the FLSA and does not apply to other federal laws such as the National Labor Relations Act, state wage and hour laws or independent lawsuits alleging independent contract misclassification under certain state statutes.

Employers should study the new Rule carefully as it differs significantly from the 2021 guidelines. The DOL’s pro-employee view of worker classification could create serious complications for those companies which rely heavily on independent contractors.

We assist Employers to evaluate, identify, and respond to new challenges that workplace laws impact businesses. Call us to assist you with your business-oriented solutions.

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