

LEGAL UPDATE

DOL Announces Proposed Independent Contractor Rule



On Feb. 26, 2026, the U.S. Department of Labor (DOL) [announced](#) a proposed rule that would rescind the department's 2024 final independent contractor rule and replace it with an analysis for employee classification under the Fair Labor Standards Act (FLSA) similar to the one adopted by the DOL in 2021. The proposed rule was [published](#) in the Federal Register on Feb. 27, 2026.

Background

A worker's coverage by a particular law or entitlement to a particular benefit often depends on whether they are an employee or an independent contractor. In general, labor laws and related tax laws do not apply to independent contractors. Under the FLSA, employees are entitled to minimum wage, overtime pay and other benefits. Independent contractors are not entitled to these protections and benefits.

Employers who misclassify employees may be liable for expensive fines and litigation if a worker should have been classified as an employee and did not receive a benefit or protection they were entitled to by law.

2024 Final Rule

On Jan. 9, 2024, the DOL released a final rule, effective March 11, 2024, that revised the agency's guidance on how to analyze who is an employee or an independent contractor under the FLSA. The 2024 final rule rescinded the 2021 independent contractor rule that was published on Jan. 7, 2021, and restored the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA. Under the 2024 rule, six economic reality factors were all weighed to assess whether a worker was economically dependent on a potential employer for work, according to the totality of the circumstances. However, several federal lawsuits challenged the 2024 final rule. In those lawsuits, the DOL took the position that it was reconsidering the final rule, including whether to rescind it.

On May 1, 2025, the DOL issued [Field Assistance Bulletin 2025-1](#) on how to determine employee or independent contractor status when enforcing the FLSA. While the DOL reviewed the 2024 final rule, the DOL's Wage and Hour Division (WHD) stated it would no longer apply the 2024 final rule's analysis when determining employee versus independent contractor status in FLSA investigations. Instead, the WHD will rely on principles outlined in [Fact Sheet #13](#) and the reinstated [Opinion Letter FLSA2019-6](#), which addresses classification in the context of virtual marketplace platforms.

Proposed Rule

The proposed rule would:

- Apply an economic reality test to determine whether a worker is in business for themselves as an independent contractor or is an employee economically dependent on an employer for work;
- Identify and explain two core factors to help determine if a worker is economically dependent on an employer for work or in business for themselves:
 - The nature and degree of control over the work; and
 - The worker's opportunity for profit or loss based on initiative and/or investment;
- Identify other factors to help determine a worker's status as an employee or independent contractor, including:
 - The amount of skill required for the work;

- The degree of permanence of the working relationship; and
- Whether the work is part of an integrated unit of production;
- Advise that the actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible; and
- Provide eight fact-specific examples applying the factors to real-life circumstances.

According to the DOL, the proposed rule is consistent with U.S. Supreme Court and federal circuit court precedent and would make it easier to properly differentiate between employees with the protections under the FLSA and those workers who work as independent contractors.

The proposed rule would also apply to the department's streamlined analysis of the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act, both of which use the FLSA's statutory definition of "employ."

Employer Takeaway

The 60-day public comment period for the DOL's proposed rule ends on April 28, 2026. The department encourages all interested parties to submit comments on the proposed rule once it is published in the Federal Register.

Employers should monitor updates on the proposed rule, including the publication of a final rule and any related legal challenges. If the final rule takes effect, employers may consider modifying existing practices and policies to comply with the new standard for employee classification under the FLSA.

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