

LEGAL UPDATE



DOL Issues Independent Contractor Final Rule

On Jan. 9, 2024, the U.S. Department of Labor (DOL) released a [final rule](#), effective March 11, 2024, revising the agency's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). This final rule rescinds the current independent contractor [rule](#) that was published on Jan. 7, 2021, and mirrors the DOL's [proposed rule](#).

Background

Under the FLSA, employees are entitled to minimum wage, overtime pay and other benefits. Independent contractors are not entitled to these protections and benefits. According to the DOL, this final rule will reduce the risk of employees being misclassified as independent contractors while providing a consistent approach for businesses that engage with individuals who are in business for themselves.

2021 Independent Contractor Rule

The DOL published the 2021 Independent Contractor Rule on Jan. 7, 2021. The 2021 rule reasserted the economic realities test (ERT) as the DOL's preferred method to determine whether a worker should be classified as an employee or independent contractor under the FLSA. In doing so, the 2021 rule focused on two core factors: the nature and degree of the worker's control over the work and the worker's opportunity for profit and loss based on initiative and/or investment. These factors carried more weight in determining the status of independent contractors.

Final Rule

The final rule rescinds the 2021 Independent Contractor Rule and returns to the pre-2021 rule precedent. In doing so, the final rule restores the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA. The final rule ensures that all ERT factors are analyzed equally without assigning a predetermined weight to a particular factor or set of factors. These six factors include the opportunity for profit or loss depending on managerial skill, investments by the worker and the potential employer, the degree of permanence of the work relationship, the nature and degree of control, the extent to which the work performed is an integral part of the potential employer's business, and the worker's skill and initiative.

Arguably, the final rule may result in classifying a greater number of workers as employees, not independent contractors. This classification would be significant, particularly in the gig economy, as it would afford more individuals FLSA rights and protections. The DOL has released [guidance](#) to help employers comply with the final rule.

IMPORTANT INFORMATION

- DOL's final rule rescinds the 2021 Independent Contractor Rule.
- The final rule restores the multifactor, totality-of-the-circumstances when determining whether a worker is an employee or independent contractor under the FLSA.
- The final rule analyzes all six economic realities test factors without assigning a predetermined weight to a particular factor.
- The final rule is effective on March 11, 2024.