

DOL Signals Abandonment of Current Independent Contractor Rule

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May 12, 2025

No one should be surprised that the independent contractor pendulum—which swings towards making that classification harder in Democratic administrations and easier in Republican ones—is now tilting towards making it easier. In pursuit of this entirely predictable goal of the Trump administration, the DOL recently [announced](#) that it will no longer enforce the current Biden-era independent contractor classification rule, which made it easier for workers to be classified as employees under the Fair Labor Standards Act (“FLSA”). While the DOL has not yet rescinded the rule itself, the announcement signals a likely return to the previous classification rule issued by the DOL during President Trump’s first term, although that rule never went into effect.

Why Does This Matter?

Whether a worker is an independent contractor or an employee determines the applicability of minimum wage and overtime requirements, among other legal obligations under the FLSA. This distinction is crucial to companies’ employment policies, business decisions, and potential liability. Employers should continue to follow the DOL’s actions regarding this issue and any new potential rule.

What Does the Current Rule Say?

As we previously [reported](#), the 2024 rule adopted a non-exhaustive six-factor test analyzing the “economic reality” of the relationship between a potential employer and worker, using the following six factors: (1) the degree to which the employer controls how the work is done; (2) the worker’s opportunity for profit or loss; (3) the amount of skill and initiative required for the work; (4) the degree of permanence of the working relationship; (5) the worker’s investment in equipment or materials required for the task; and (6) the extent to which the service rendered is an integral part of the employer’s business. In addition to the above non-exhaustive factors, the “totality of the circumstances” may be considered, broadening the test.

What Does the Announcement Mean?

The announcement by the DOL means that the DOL will not apply the 2024 rule in pending investigations. In pending lawsuits challenging the 2024 rule, the DOL has taken the position that it is reconsidering the 2024 Rule, including whether to rescind the regulation and that it is currently reviewing and developing the appropriate standard for classification. The DOL has also advised that it will enforce the FLSA in accordance with [Fact Sheet #13](#) from July 2008, containing a narrower multi-factor test. Until further action is taken by the DOL, the 2024 rule remains in effect for private litigation.

What Should Employers Do Next?

Employers should continue to monitor the DOL's actions on classification, specifically, whether it will issue a new rule or return to a previous employer-friendly rule, which may allow employers to alter current classification schemes. It is important to note that a new DOL rule or this announcement do not alter state and local laws, many of which provide more stringent, employee-friendly standards for determining worker classification. Employers will need to assess where they operate and where their employees are based to determine the applicability of classification standards. Please reach out to a member of Kelley Drye's Labor and Employment team for additional guidance and help.