

# ALERT

March 2026

## DOL Proposes Independent Contractor Classification

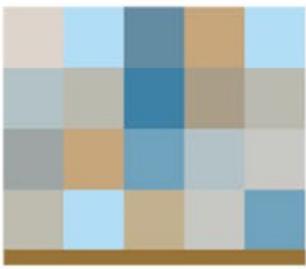
*By: Brian C. Daughney and Alexander Tomaro*

On February 26, 2026, the U.S. Department of Labor (DOL) issued a proposed rule revising how independent contractor status is evaluated under the Fair Labor Standards Act (FLSA). The proposal would rescind the 2024 Biden-era final rule and revert to an approach previously adopted during the first Trump administration. This revised approach is considered as more employer- and business-friendly than the approach it replaces.

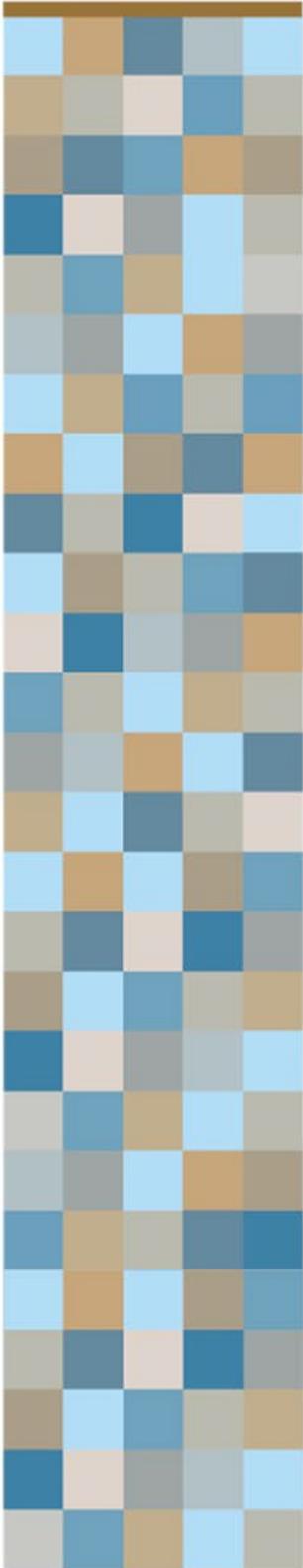
The proposed rule, titled “Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act” could carry significant legal and economic consequences for employers, particularly in industries that rely heavily on independent contractors, including construction, home health, transportation, warehousing, ridesharing, agriculture, and food delivery. Unlike employees covered by the FLSA, independent contractors generally are not entitled to minimum wage or overtime pay and are typically ineligible for unemployment insurance and workers’ compensation.

If finalized, the rule is anticipated to be effective in the second or third quarter of 2026. The highlight points of the proposed rule would:

- Re-Establish the “economic reality” test to determine whether a worker is an independent contractor or an employee who is economically dependent on an employer.
- Elevate two “core” factors in the classification analysis: (1) the nature and degree of control over the work, and (2) the worker’s opportunity for profit or loss based on initiative or investment. These core factors would be assessed first, and if both point to the same outcome, that classification is likely to be correct.
- Permit consideration of additional factors—such as the skill required, the permanence of the relationship, and whether the work is part of an integrated unit of production—while emphasizing that the list is non-exhaustive and that no single factor is determinative. These factors would function as secondary guideposts and, in many cases, would be less probative than the core factors and unlikely to outweigh them when the core factors align.



# ALERT



- Prioritize actual practice over contractual labels, meaning how the parties operate in reality would matter more than what a contract says or what is theoretically possible.
- Clarify that certain requirements generally do not constitute “control” indicative of employee status, including obligations to comply with legal requirements, follow health and safety standards, maintain insurance, or meet deadlines. This marks a departure from the Biden-era rule, which indicated that some of these requirements could, in appropriate circumstances, be evidence of control.

Historically, independent contractors are generally viewed as operating their own businesses and, unlike employees, are not covered by the FLSA’s minimum wage and overtime requirements. In practice, however, the boundary between the two categories is often murky, which creates real risk of costly misclassification.

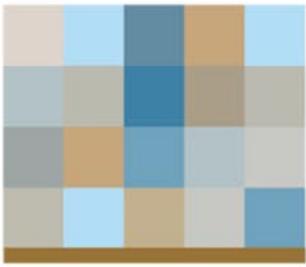
What potential risks to employers might result from this misclassification? If an employer treats workers as independent contractors and a court later determines they should have been classified as employees, the company may face liability for unpaid minimum wages and overtime, along with benefits and taxes, plus additional penalties and attorneys’ fees. Given these potential consequences, employers should routinely review and audit their worker-classification practices to confirm they remain compliant.

DOL, under the Trump administration has stated that the proposed rule will provide employers, particularly those that depend on independent contractors, with greater clarity and increased flexibility in structuring these relationships.

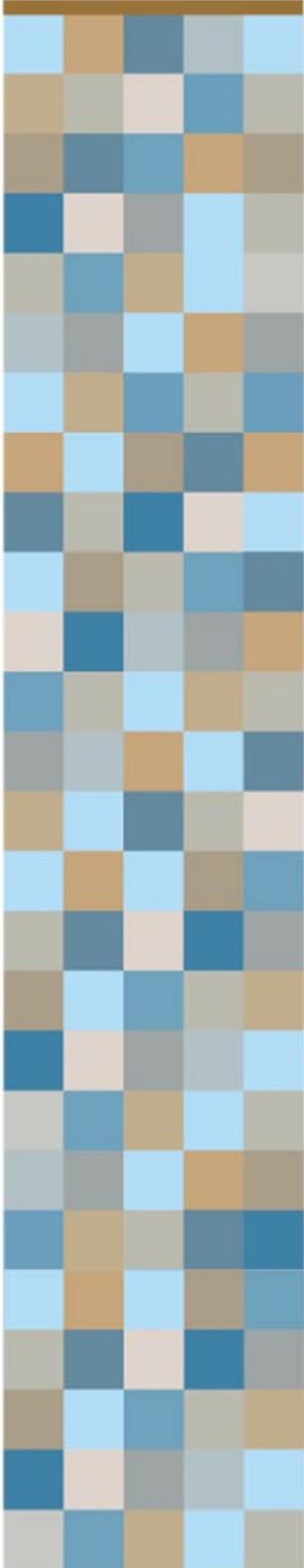
DOL believes that the focus for the analysis should be on whether the worker exhibits the kind of reliance on an employer for work that is typical of an employee, as opposed to operating more like a business owner running a separate enterprise. As part of its approach. DOL stresses that “economic dependence” is not determined by how much the worker earns or whether the worker has other income streams.

Once finalized, the proposal would formally supplant the existing Biden-era rule. Next, the DOL will publish the proposal in the Federal Register and open a 60-day public comment period, which could be extended if the agency determines additional time is needed to review and respond to stakeholder input. Although the DOL may make modest adjustments in response to comments, we do not anticipate major substantive changes.

The proposed rule can be viewed at <https://public-inspection.federalregister.gov/2026-03962.pdf>.



# ALERT



At this stage, the proposal is just that, a proposal, so employers should not expect immediate changes to their current obligations. That said, companies that rely heavily on independent contractors should pay close attention: worker-classification remains an active enforcement and litigation area, and any shift in the federal standard can affect risk assessments, documentation practices, and how relationships are structured going forward. The best approach is proactive rather than reactive—continue applying existing law, ensure classifications are defensible under the economic reality framework, and consider a targeted review of contractor relationships (particularly for roles that look employee-like in day-to-day practice). We will continue to monitor the rulemaking process and flag any meaningful changes or compliance steps once a final rule is issued and an effective date is set.

If you have any questions regarding the matter raised in this Alert, please feel free to contact either Brian Daughney at [bdaughney@moritthock.com](mailto:bdaughney@moritthock.com) or Alexander Tomaro at [atomaro@moritthock.com](mailto:atomaro@moritthock.com).

*Founded in 1980, Moritt Hock & Hamroff is a 90-attorney full service, AV-rated commercial law firm that provides a wide range of legal services to businesses, corporations and individuals worldwide from its offices in New York City, Garden City and Fort Lauderdale. The firm's practice areas include: business divorce, closely-held/family business practice; commercial foreclosure; commercial lending & finance; condominium & cooperative services; construction; copyrights, trademarks & licensing; corporate, mergers and acquisitions, & securities; creditors' rights, restructuring & bankruptcy; dispute resolution; domicile planning; employment; healthcare; landlord & tenant; lender finance; litigation; marketing, advertising & promotions; not-for-profit; privacy, cybersecurity & technology; real estate; secured lending, equipment & transportation finance; sports law; tax; and trusts & estates.*



*This Alert is published solely for the interests of friends and clients of Moritt Hock & Hamroff LLP for informational purposes only and should in no way be relied upon or construed as legal advice.*

©2026 Moritt Hock & Hamroff LLP