

Department of Labor Announces Final Rule on Employee or Independent Contractor Classification Under the FLSA

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On January 10, 2024, the U.S. Department of Labor (“DOL”) published a final rule, effective March 11, 2024, that revises the DOL’s guidance on how to analyze whether an individual providing services is an employee or independent contractor under the Fair Labor Standards Act (“FLSA”). Under the new rule, the ultimate inquiry is whether the worker is economically dependent on the employer for work and is thus an employee, or is in business for themselves and is thus an independent contractor.

To help make this determination, the rule restores the long-standing multifactor “economic reality” test used by courts to determine whether a worker is an employee or independent contractor. The rule addresses six factors that guide the analysis of a worker’s relationship with the company:

- Opportunity for profit or loss depending on managerial skill of the worker
- Investments by the worker and the potential employer
- Degree of permanence of the work relationship
- Nature and degree of control of the worker by the company
- Extent to which the work performed is an integral part of the potential employer's business
- Skill and initiative

The final rule provides detailed guidance regarding the application of each of these six factors and provides that no factor or set of factors has a predetermined weight. Additional factors may also be relevant if such factors bear on whether the worker is economically dependent on the company for work.

The rule separately rescinds the 2021 Independent Contractor Rule that “afforded greater weight” to two “core factors”: “the nature and degree of the individual’s control over the work” and “the individual’s opportunity for profit or loss.” The DOL explained that it believed the 2021 rule was not consistent with the law and longstanding judicial precedent. The DOL also stated that the final rule does not adopt the “ABC” test, which permits an independent contractor relationship only if all three factors in a three-factor test are satisfied.

In crafting the new rule, the DOL’s Wage and Hour Division considered feedback from stakeholders that was received during forums held in the summer of 2022 and during the comment period after the proposal’s announcement in October 2022.

The full text of the new final rule can be found [here](#).



Affected employers should review their independent contractor relationships to determine whether the newly published rule will require a change in their classification. If you have any questions, please contact an RLF employment attorney.