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Labor & Employment | Administrative Law & Regulatory Update

November 20, 2026

U.S. Department of Labor Issues Final Rule Readopting Its 2021 Interpretation of Who Qualifies as an Independent Contractor Under the FLSA

The Final Rule rescinds the Biden Administration's 2024 interpretation and largely readopts the first Trump Administration's 2021 interpretation.

On November 19, 2026, the Department of Labor announced a final 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." The Final Rule governs the Department's interpretation of who qualifies as an "independent contractor" under the Fair Labor Standards Act (FLSA), as well as the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Independent contractors are not subject to the FLSA's minimum wage and overtime requirements because the statute applies only to "employees."

The Final Rule rescinds the Department's 2024 interpretation adopted during the Biden Administration—which narrowed the definition of independent contractor—and largely readopts the 2021 framework that the Department previously issued during the first Trump Administration. It also amends the Department's regulations addressing employee or independent contractor status under MSPA and the FMLA so that the same analysis applies to those statutes.

The Final Rule is largely identical to the Proposed Rule that the Department issued earlier this year, with a few changes:

- **Adding new examples.** The Final Rule includes six more illustrative examples than the Proposed Rule: Two are about app-based delivery work, two are about farm labor contractors, and two about workers who lease trucks.

- **Clarifying the control factor analysis.** It clarifies that for purposes of the control factor, whether certain requirements will be indicative of control depends on their "substance and practical operation" not how they are characterized. As the Department explained in the preamble, "[m]erely labeling requirements 'health and safety,' for example, does not automatically mean they could not possibly indicate employer-type controls regardless of their nature, content, or extent." If the measure establishes a health or safety standard typical of a business-to-business relationship then it would not be indicative of employee status.

- **Tweaking the opportunity for profit or loss analysis.** It tweaks the opportunity for profit or loss analysis by explaining that both investments and initiatives should be considered together and that evidence of one consideration could be outweighed by more persuasive evidence under the other consideration.

- **Declining the control-first analysis.** The Department did not adopt its control-first analysis, under which it would have ended the analysis if the control factor pointed to employee classification.

The Final Rule will go into effect on January 22, 2027.

Worker classification turns on the "economic realities" of the relationship—whether an individual is economically dependent on the hiring entity for work. As with the 2021 Rule, the Department returns to a "core factors" framework to determine what constitutes "economic dependence":

- **Control.** This factor turns on who—the hiring entity or the individual—exercises control over key aspects of the performance of work, such as setting schedules or workload and whether the individual can work for others.

- **Opportunity for profit or loss.** This factor examines the extent to which the individual has an opportunity to earn profits or incur losses based on their exercise of initiative, effective and efficient management of their time and investments, and other similar considerations.

If these two factors point towards the same classification, it is likely that is the appropriate classification. Other factors are less probative and are thus unlikely to outweigh the combined probative value of the two core factors.

These other factors that may bear on the analysis include:

- **The amount of skill required for the work.** This factor considers whether the work requires specialized training or skill that the hiring entity does not provide.

- **The degree of permanence of the working relationship.** This factor analyzes whether the work is definite in duration and/or sporadic, or whether it is indefinite and/or continuous.

- **Whether the work is part of an integrated unit of production.** This factor considers whether the individual's work is segregable from the hiring entity's production process.

While other factors may be relevant, they must in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the hiring entity for work.

The Final Rule also emphasizes actual practices over theoretical or contractual possibilities and contains several examples of how the factors work in practice.

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