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January 30, 2024

January Tip of the Month: DOL Reinstates 'Economic Realities Test' for Independent Contractor Analysis



On January 10, 2024, the U.S. Department of Labor (DOL) published a Final Rule revising its prior guidance on how to determine whether an individual may properly be classified as an independent contractor under the Fair Labor Standards Act (FLSA).

The Final Rule returns to the pre-Trump administration "Economic Realities Test," which considers the following factors: 1) the individual's opportunity for profit or loss, depending on managerial skill; 2) whether any investments by the worker for items such as tools or goods are capital or entrepreneurial in nature; 3) the degree of permanence of the work relationship; 4) the nature and degree of control, including reserved control, over the performance of the individual's work and the economic aspects of the working relationship; 5) the extent to which the work performed is an integral part of the potential employer's business; and 6) whether the worker uses specialized skills to perform the work. In applying the test, equal weight is given to each factor, and no one factor is determinative. Ultimately, the test aims to assess whether a worker is economically dependent upon the employer, rather than being in business for themselves. The Final Rule takes effect March 11, 2024, and employers should promptly assess their contractor and employee classifications and consider any changes that may be necessary.

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