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US Department of Labor Proposes Independent Contractor Rule

On October 13, 2022, the U.S. Department of Labor (DOL) published a [Notice of Proposed Rulemaking](#) (the Proposed Rule) that provides guidance on determining employee or independent contractor classification under the Fair Labor Standards Act (FLSA). Proper classifications are significant because independent contractors are not afforded wage-and-hour protections under the FLSA and/or applicable state law, such as minimum wage for all hours worked or overtime compensation for over 40 hours worked in one workweek. Misclassification can subject companies and organizations to class and collective actions and expose them to significant liability.

The Proposed Rule depends on the totality of the circumstances and considers the following factors, none of which have a predetermined weight:

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

The Proposed Rule represented the DOL's attempt to roll back the Trump-era amendment of the regulations that made it easier for employers to classify workers as independent contractors. Before any final rule is issued, the public has an opportunity to submit comments regarding the Proposed Rule and may do so either electronically or via mail until November 28, 2022.

Given the potential changes, companies and organizations utilizing independent contractors are encouraged to seek competent legal counsel with questions regarding the development and possible implementation of this Proposed Rule.

Authors

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