

CLIENT ALERT

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Independent Contractor Status

U.S. Department of Labor

The United States Department of Labor recently announced the final rule regarding independent contractor status under the Fair Labor Standards Act. This rule, scheduled to go into effect on March 11, 2024, rescinds the 2021 Independent Contractor Rule, and will make it more difficult for an employer to classify individuals as independent contractors. As part of its news release, the DOL states “The rule provides guidance on proper classification and seeks to combat employee misclassification, a serious problem that impacts workers’ rights to minimum wage and overtime pay, facilitates wage theft, allows some employers to undercut their law-abiding competition and hurts the economy at large.”



This rule reinstates the six-factor analysis which had been in effect before the 2021 Rule. The six-factor analysis is much more difficult for an employer to meet, and it is much less clear in most cases whether an individual is actually an independent contractor or an employee. The six factors are:

1. opportunity for profit or loss based on managerial skill;
2. investments by the worker and the potential employer;
3. degree of permanence of the relationship;
4. nature and degree of control;
5. extent to which the work performed is an integral part of the potential employer’s business;
- and
6. (6) skill and initiative.

No single factor is determinative; rather, the “totality of the circumstances” controls. Additional factors may be considered if they are relevant to the overall question of economic dependence. Employers should take note of this change and analyze any situation where they have workers classified as independent contractors to ensure compliance going forward after March 11, 2024.



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