

Employee Versus Independent Contractor? Labor Department Ruling Finalizes New Classification Regulations

January 7, 2021

Earlier this week, the U.S. Department of Labor (DOL) created a multifactor test to determine whether an individual is classified as an independent contractor or an employee under the Fair Labor Standards Act (FLSA).

This rule will take effect on March 8, 2021.

Under the FLSA, independent contractors are not eligible for minimum wage and overtime compensation. The longstanding economic realities test used to make these determinations and its components have not always been consistently articulated by the courts, or efficiently defined by the DOL, resulting in much confusion.

The new rule focuses again on an economic reality test to distinguish employees from independent contractors, clarifying that the concept of economic dependence turns on whether a worker is in business for herself (and therefore an independent contractor) or is economically dependent on a potential employer for work (and therefore an employee).

The rule, which should make classification easier, specifies five factors to make the determination. The two core factors, which carry the greatest probative weight, examine:

- the amount of control that a person has over their own work and
- the opportunity for profit or loss as a result of a personal investment.

If both of these factors arrive at the same conclusion, there is no need to make a further examination.

If the first two factors come to differing conclusions, the rule lays out three other factors that can aid in the assessment:

- the amount of skill required for the position,
- the permanence of the working relationship, and
- how integrated the worker's role is to the organization's overall operation.

EMPLOYEE VERSUS INDEPENDENT CONTRACTOR? LABOR DEPARTMENT RULING FINALIZES NEW CLASSIFICATION REGULATIONS Cont.

Even though the rule is now codified into regulation, it is not binding on courts nor does it preempt state law with a broader definition of “employee.”