



Aaron C. Schlesinger  
aschlesinger@pecklaw.com



Stephen E. Irving  
sirving@pecklaw.com

## U.S. Department of Labor Seeks to Clarify Employee vs. Independent Contractor Status Under Federal Wage and Hour Laws

The question of whether a worker should be classified as an employee or independent contractor is a major issue of concern for businesses across the spectrum. Many industries have long faced challenges regarding the appropriate categorization of workers, potentially resulting in significant implications for compliance and operational risk.

To provide better guidance on the issue, last week the U.S. Department of Labor (DOL) proposed a new rule to rescind the 2024 independent contractor rule and replace it with a more business-friendly “core factor” analysis. The new rule returns to a framework similar to the 2021 rule, which emphasized whether or not a worker is in business for themselves, focusing on control and opportunity for profit or loss.

### Key Factors for Analysis

The proposed analysis will specifically:

1. Adopt an “economic reality” test to determine a worker’s status as an employee or independent contractor, examining whether a worker is in business for him- or herself (independent contractor) or is economically dependent on a potential employer for work (employee);
2. Identify and explain two “core factors”: (1) the nature and degree of the worker’s control over the work; and (2) the worker’s opportunity for profit or loss based on initiative and/or investment—a factor that federal courts often consider to answer the question of whether a worker is economically dependent on someone else’s business or is in business for him- or herself;
3. Identify three other factors relevant to the analysis, particularly when the two core factors do not point to the same classification: (1) the amount of skill required for the work; (2) the degree of permanence of the working relationship between the worker and the putative employer; and (3) whether the work is part of an integrated unit of production; note that additional factors may be considered in the analysis;
4. Advise that the parties’ actual practices are more relevant than what may be contractually called for or theoretically possible; and
5. Provide eight examples of how the economic reality factors would apply in certain real-life situations.

### Penalties for Misclassification

Misclassification remains a substantial risk for employers in many industries. Improper classification can lead to legal and financial consequences resulting in monetary penalties, liability for unpaid wages and overtime, tax implications and/or workers’ compensation liability.

Although the new rule aims to provide clearer guidance, it does not significantly lessen the risks faced by the industry. Instead, it offers better direction on how to assess classification questions when they arise.

### **Opportunity for Public Comment**

The DOL encourages interested parties to submit comments on this proposal here. The Notice of Proposed Rulemaking's 60-day comment period closes at 11:59 pm ET on April 28, 2026.

### **Moving Forward**

To determine compliance, businesses that utilize independent contractors should review and assess their current worker classifications, job descriptions, contracts, policies, and practices, and seek legal guidance when necessary.

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