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DOL Issues Final Rule Regarding Employee and Independent Contractor Statuses

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On November 19, 2026, the U.S. Department of Labor issued a final rule changing the analysis employers must use to decide whether a worker is an employee or independent contractor under the Fair Labor Standards Act, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act. The final rule went into effect on November 23, 2026.

Notably, the Rule rescinds previous regulations established in 2024 and establishes different sub-facts and considerations under the general "economic realities test" standard set forth by the U.S. Supreme Court.

The Economic Reality Test

The U.S. Supreme Court has developed a series of factors as "important" for distinguishing employees and independent contractors. Those factors include "degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation[,] and skill required in the claimed independent operation." The Supreme Court has emphasized repeatedly that no one factor is controlling nor are the factors an exclusive list. Rather, courts should consider the totality of the factors and their underlying circumstances.

The 2026 Final Rule's "Core" Factors

Under the Rule, the analysis returns for the most part to that contained in a previous rule adopted in 2021 and includes fourteen fact-specific examples applying the factors below to real-life circumstances.

There are two "core factors" that are primarily considered in determining worker status:

1. The nature and degree of the worker's control over the work.

This factor weighs in favor of independent contractor status where the worker sets his or her own schedule, selects his or her projects, or retains the ability to work for others, which might include the potential employer's competitors.

In contrast, an individual might be an employee under the Act where the potential employer exercises substantial control over key aspects of the work, such as by controlling the individual's schedule or workload or by directly or indirectly requiring the individual to work exclusively for the potential employer.

Importantly, the Rule notes that requiring the individual to comply with specific legal obligations, health and safety standards, carry insurance, meet contractually agreed- upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses is not control that makes the individual more or less likely to be an employee.

2. The worker's opportunity for profit or loss based on initiative and/or investment.

The Rule explicitly cautions that the profit or loss opportunity factor is not dependent upon both initiative and investment pointing the same way and indicates that each one can suggest different statuses.

However, the Rule does generally state that this factor weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster at a fixed hourly rate by a company.

If both factors above point towards the same classification, there is a substantial likelihood that is the individual's accurate classification.

Remaining Factors

There are four other factors to be considered, particularly when the two core factors do not point towards the same classification:

3. The amount of skill required for the work.

More specialized skill or training that the potential employer does not provide suggests independent contractor status.

If no specialized skill or training is required, or if the worker is dependent upon the potential employer to furnish training and equip the worker with skills, then such factor suggests employee status.

4. The degree of permanence of the working relationship between the worker and the potential employer.

A work relationship that is definite in duration or sporadic by design indicates independent contractor status.

An indefinite or continuous working relationship leans towards employee status.

5. Whether the work is part of an integrated unit of production.

Where the work can be segregated from the potential employer's production process, the factor favors independent contractor status.

If the individual's work is a component of the potential employer's integrated production process for a good or service, employee status is more likely.

Notably, this factor replaced the 2024 factor concerning the importance or centrality of the individual's work to the potential employer's business.

6. Additional factors

The Rule provides for a general catch-all "additional factors" category. However, these factors may be considered only if they in some way indicate whether the individual is in business for themselves, as opposed to being economically dependent on the potential employer for work.

Primacy of Actual Practice Over Theory

Finally, the DOL specifically emphasizes that the parties' actual practices are more relevant than what contractual or theoretical possibilities might allow or disallow. The caveat to take from this particular regulation is that what is done on the job is more significant than what is listed on paper.

If you have any questions about determining employee or independent contractor status or need training and policy drafting, please contact your Knox Law attorney, our Labor & Employment group, or call us at 814-459-2800.



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