



# DOL Proposes New Rule on Worker Classification

**MARCH 2026**

On February 26, 2026, the U.S. Department of Labor (DOL) announced a proposed rule concerning the classification of workers as independent contractors or employees: “Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act.” (Read [here](#).)

This classification issue is significant as there has been extensive litigation and administrative proceedings concerning whether individuals are properly classified as employees, entitled to minimum wage, overtime pay, and other protections under federal law, or instead qualify as independent contractors, which does not afford such protections.

According to the DOL, the proposed rule will more easily establish whether a worker is an employee or an independent contractor under federal wage and hour law. The proposed rule would rescind and replace the 2024 rule issued under the Biden administration and return to an analysis substantially similar to what applied during the first Trump administration.

## **The Proposed Rule’s Approach to Distinguishing Between Employees and Independent Contractors**

The proposed rule is based on an “economic reality test” and centers on two main questions: (1) the nature and degree of control over the work, and (2) the worker’s opportunity for profit and loss based on initiative or investment.

The nature and degree of control over the work criterion focuses on who controls key aspects of the work, including scheduling, project selection, workload, and the ability to work for others. More worker control over these aspects suggests independent contractor status; more employer control suggest employee status.

The worker’s opportunity for profit and loss factor addresses the worker’s influence on his earnings. A worker who increases earnings by working more hours or faster is more likely an employee, while one who does so through managerial skill, business acumen or judgment, or capital investment is more likely an independent contractor.

In addition to these core factors, the proposed rule references additional secondary factors that also may be considered, such as the amount of skill the work requires, the degree of permanence of the working relationship, and whether the work is part of an integrated unit of

production. However, these additional factors are not given as much weight as the two core factors.

### **Replacing the Biden-Era Rule**

The DOL's proposed rule would rescind and replace the Biden-era rule that utilized a six-factor, totality-of-the-circumstances test for determining worker status: (1) opportunity for profit or loss depending on managerial skill, (2) investments by the worker and the potential employer, (3) degree of permanence of the work relationship, (4) the nature and degree of control, (5) extent to which the work performed is an integral part of the potential employer's business, and (6) skill and initiative.

According to the DOL, the previous rule was ambiguous and suggested an unnecessarily high bar to find independent contractor status, which would deter businesses from engaging with bona fide independent contractors. The DOL contends that the proposed rule would facilitate more accurate and predictable classifications of workers.

### **Key Takeaways and Next Steps**

The DOL's proposed rule could have significant legal and economic consequences for companies in industries that tend to rely on independent contractors (such as, for example, trucking and healthcare). The DOL maintains that the proposed rule could provide employers with more certainty over worker classification, and workers likely will be more easily deemed independent contractors than under the Biden-era rule's analysis.

Moreover, the DOL proposes to apply the same analysis to the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act. If finalized, that would create a single, uniform federal standard for determining employee versus contractor status across these laws.

The deadline for public comments on the proposed rule is April 28, 2026.

In the interim, there are a few steps employers and businesses may consider taking now:

- Evaluate current worker classifications – Companies may wish to consider reviewing their existing independent contractor relationships under the proposal's new frameworks. Relationships where the employer exercises significant control over how much work is performed, or where the worker has limited opportunity for profit or loss, may warrant closer scrutiny.
- Review contracts and documentation – Companies may benefit from reviewing their independent contractor agreements and employment contracts to ensure that the terms accurately reflect the actual working relationship and day-to-day practices. Discrepancies

between written agreements and operational realities can create classification risks.

- Recognize conflicting state law – Companies should evaluate whether the states in which they conduct business have other or more stringent tests to determine independent contractor status that must be followed, which would be unaffected by the DOL's actions.

### **Additional Information**

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