

DOL's Announcement Pausing Enforcement of 2024 Independent Contractor Rule Signals Future Change to Come

Labor & Employment Law Update

By Ann Hanneman on May 13, 2025

On May 1, 2025, the U.S. Department of Labor (DOL) announced it is reconsidering the 2024 Independent Contractor Rule (2024 Rule), which made it more difficult for businesses to classify independent contractors under the Fair Labor Standards Act (FLSA). This announcement signals the likelihood that the 2024 Rule will be rescinded under the new Trump Administration and may be replaced with a rule that applies a more business-friendly standard.

The DOL Field Assistance Bulletin No. 2025-1 (FAB) issued on May 1, 2025, directed Wage and Hour Division (WHD) investigators to apply the 2008 standard that was adopted under the first Trump Administration. While the 2024 Rule remains in place, the FAB states:

WHD will no longer apply the 2024 Rule's analysis when determining employee versus independent contractor status in FLSA investigations. WHD will enforce the FLSA in accord with Fact Sheet #13 (July 2008), and as further informed by Opinion Letter FLSA 2019-6 with respect to any matters for which no payment has been made, directly to individuals or to the DOL, for back wages and/or civil money penalties as of May 1, 2025.

Implications for Employers

This shift in direction was not a surprise, as the DOL noted this change in pending litigation cases challenging the 2024 Rule. Although a promising sign to businesses, the FAB made clear that the 2024 Rule remains in effect for purposes of private litigation and that there is currently no change to employer's responsibilities under the FLSA.

Employee misclassification continues to be an issue that is complex and requires an understanding of all individuals laws, rules, and regulations that affect each business relationship. This includes not only federal wage and hours laws, but other federal, state and local laws (including those that are industry-specific) that

apply to the business. Generally speaking, it can be an uphill and costly battle for employers to meet the standards to establish an independent contractor relationship. This announcement is another reminder to employers to carefully examine the facts surrounding any contested independent contractor relationship.

Key Takeaways

- All businesses (profit and non-profit alike) must pay attention to all applicable federal, state, and local rules and mandates addressing independent contractor classifications. Many states have passed or are considering enacting restrictions making it harder for employers to have independent contractors.
- The standards and tests applied to determine independent contractor status are driven by the facts of the relationship, not by the parties' designation or preference.
- Employers should take steps to minimize the risk of misclassification including: working with counsel to audit worker classifications, training managers and supervisors on proper classification, and reviewing and drafting independent contractor agreements that support the classification.

Upcoming Webcast

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Wednesday, May 21, 2025 | 8:30 AM CT

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