

New Independent Contractor Rule Facing Multiple Legal Challenges

Article By:

Adriana S. Kosovych

Corben J. Green

On January 9, 2024, the United States Department of Labor's (DOL) Wage and Hour Division (WHD) announced a [final rule](#) regarding how to determine whether a worker qualifies as an employee or may be considered an independent contractor under the Fair Labor Standards Act (FLSA). Designed to combat misclassification, the final rule rescinds DOL's Trump-era [Independent Contractor Rule](#) issued in January 2021 and restores the non-exhaustive six-factor test courts have long used to evaluate whether or not independent contractors were properly classified. The test considers:

opportunity for profit or loss a worker might have;

1. the financial stake and nature of any resources a worker has invested in the work;
2. the degree of permanence of the work relationship;
3. the degree of control over the person's work;
4. whether the work the person does is essential to the business;
5. the worker's skill and initiative.

Barring intervening action by a court or DOL, the new rule will take effect March 11, 2024, and it is already facing multiple legal challenges, including suits in the Northern District of Georgia and the Fifth Circuit Court of Appeals.

In *Warren v. U.S. Department of Labor*, No. 2:24-cv-00007 (N.D. Ga., Jan. 16, 2023), four freelance workers have challenged the new rule as being unconstitutionally vague, arguing that the new rule is arbitrary and capricious and that the DOL exceeded its statutory authority in passing it. The *Warren* plaintiffs seek an injunction to bar enforcement of the new rule.

In another legal challenge, *Coalition for Workforce Innovation v. Su*, No. 22-40316 (5th Cir., Jan 11, 2023), the Coalition for Workforce Innovation, Associated Builders and Contractors of Southeast Texas, Inc., and the Financial Services Institute (a trade association and advocacy groups) together filed a motion in the Fifth Circuit to terminate the stay in their lawsuit challenging DOL's decision to delay and withdraw the 2021 Independent Contractor Rule promulgated under the Trump DOL. In that litigation, the District Court for the Eastern District of Texas determined that the DOL violated the

Administrative Procedure Act (APA) in its efforts to delay and to rescind the Trump-era rule, and once the matter reached the Fifth Circuit the parties agreed to a stay while DOL prepared a new rulemaking, which ultimately led to the final rule issued earlier this month. In their latest filing, these organizations are requesting that the Fifth Circuit remand their case to the district court to consider whether the new rule violates the APA.

Watch for further developments regarding this new rule, as more litigation challenging the regulation seems likely, which could impact its taking effect on March 11.

©2025 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volume XIV, Number 31

Source URL: <https://natlawreview.com/article/new-independent-contractor-rule-facing-multiple-legal-challenges>