

# Businesses Get a Break: DOL Won't Enforce 2024 Independent Contractor Rule

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## Takeaways

- When analyzing employment status under the FLSA, DOL investigators will apply previous subregulatory guidance, instead of the 2024 independent contractor final rule, including a 2019 opinion letter addressing independent contractor status and a 2008 fact sheet.
- Several lawsuits challenging the 2024 final rule are pending but the litigation is on hold as the DOL considers whether to rescind the rule.
- For now, the 2024 final rule remains in effect “for purposes of private litigation.”

The U.S. Department of Labor (DOL) will no longer apply the 2024 independent contractor final rule when analyzing whether a worker is an employee or independent contractor under the Fair Labor Standards Act (FLSA).

The 2024 final rule revised the standard for determining whether a worker is an employee or independent contractor under the FLSA. (See [Labor Department Releases Independent Contractor Final Rule, Revising Standard](#).) Several lawsuits over the 2024 final rule are still pending, but the DOL has recently sought to put the litigation on hold while it reconsiders whether to defend or rescind the rule. (See [Employers Still Need to Abide 2024 Independent Contractor Rule Despite DOL Hints of Dropping It](#).) In the meantime, the DOL has paused enforcement of the final rule, directing its field staff not to apply the rule in agency investigations.

## Field Assistance Bulletin

The DOL's directive came in a [Field Assistance Bulletin](#) issued May 1, 2025, by Acting Administrator of the Wage and Hour Division (WHD) Donald M. Harrison, III. The bulletin, “FLSA Independent Contractor Misclassification Enforcement Guidance,” instructs WHD field staff that instead of applying the standard set forth in the 2024 final rule, investigators must analyze employment status under the longstanding framework set forth in [Fact Sheet #13](#) and [Opinion Letter FLSA2019-6](#), which addresses independent contractor status in the gig economy.

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A return to prior guidance “provides greater clarity for businesses and workers navigating modern work arrangements while legal and regulatory questions are resolved,” the DOL announced in a press statement.

The enforcement guidance applies “with respect to any matters for which no payment has been made, directly to individuals or to DOL, for back wages and/or civil money penalties as of May 1, 2025.”

## **Fact Sheet #13**

Issued in 2008, Fact Sheet #13 cites numerous factors courts historically have considered when determining whether an individual “is engaged in a business of his or her own” as a matter of economic reality or is dependent on the entity for which they are performing work. These factors include:

1. The extent to which the services rendered are an integral part of the principal’s business.
2. The permanency of the relationship.
3. The amount of the alleged contractor’s investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor’s opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

In 2024, the DOL revised Fact Sheet #13 to conform to the new final rule. The DOL on May 1 restored the 2008 version to conform to its current enforcement position.

The 2024 final rule adopts and details six similar “economic reality” factors. The 2024 final rule does not include “degree of independent business organization and operation” among the delineated factors. It allows for consideration of other factors beyond this non-exclusive list, although allowing for greater flexibility in evaluating the “totality of the circumstances” of the relationship. This flexibility, however, has made it more challenging for businesses seeking clear criteria for ensuring their intended independent contractors are not classified as employees under the DOL standard.

## **Opinion Letter**

Opinion Letter FLSA2019-6 is referenced in the Field Assistance Bulletin as additional guidance informing the independent contractor analysis. The opinion letter addresses the employment status of gig workers who contract with customers through a virtual marketplace company’s (VMC) platform.

Applying the traditional six factors, the wage and hour administrator determined that the workers in question did not fit “any traditional paradigm” covered by the FLSA. The VMC is merely a “referral service,” and the platform users do not have a working relationship with the company. Rather, they work for the consumers with whom they match on the platform.

The DOL withdraw the opinion letter during the Biden Administration. The acting wage and hour administrator recently reinstated the guidance and redesignated it as Opinion Letter FLSA2025-2 (May 2, 2025).

## Takeaway

The Field Assistance Bulletin indicates that WHD will not enforce the 2024 final rule while it develops the “appropriate” independent contractor standard. It also states, however, that DOL may exercise its enforcement authority in specific cases as explicitly directed by the wage and hour administrator.

The DOL did *not* attempt, in the meantime, to restore a streamlined independent contractor final rule published by the first Trump Administration. The Trump rule focused on two “core” factors that DOL considered most probative of independent contractor status. That final rule, issued in early 2021, was rescinded by the Biden DOL before it took effect. To resurrect the Trump final rule would require the DOL to undertake formal notice-and-comment rulemaking.

The 2024 final rule remains in effect “for purposes of private litigation” relating to independent contractor status under the FLSA, the WHD noted. Businesses also need to comply with the more restrictive state laws defining independent contractor status in the jurisdictions where they operate.

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