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DOJ Retracts Biden-Era Independent Contractor Classification Rule

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On May 1, 2025, the United States Department of Labor's ("DOL") Wage and Hour Division announced it would not enforce or apply the Biden-era 2024 Final Rule regarding independent contractor classification ("2024 Rule"). Specifically, the DOL directed its investigators "not to apply the 2024 Rule's analysis" in enforcement matters. The DOL's announcement will undoubtedly make it easier to classify workers as independent contractors at the federal level—and continues a seesaw of regulatory pull-back from Biden-era directives. While the 2024 Rule does remain in effect for private litigation and certain state-specific tests still impose higher worker classification standards than the current federal guidelines, the DOL's announcement is a win for employers seeking to classify workers as contractors.

The 2024 Rule

Under the 2024 Rule, classifying workers as independent contractors was somewhat akin to threading a needle. Imposed on March 15, 2024, the 2024 Rule mandated a complex, employee-friendly analysis that focused on a holistic review of the "totality of the circumstances" to ascertain whether a worker was "economically dependent" on an employer and, therefore, not an independent contractor. These six factors included:

1. The nature and degree of an employer's control over the worker;
2. The worker's opportunity for profit or loss;
3. Any investments by the workers and the employer;
4. The degree of permanence of the working relationship;
5. The extent to which the work performed is integral to the employer's business; and
6. The amount of specialized skill and business initiative required.

Under the 2024 Rule, no factor was assigned more weight than another. Thus, the 2024 Rule was commonly referred to as the "totality of the circumstances" test. The net result was a high degree of both difficulty and uncertainty for employers seeking to classify workers as independent contractors.

Legal Challenges to the 2024 Rule

Business groups quickly challenged the 2024 Rule in courts across the country. At present, five lawsuits are pending. In each, the main argument is that the 2024 Rule was arbitrary, capricious, and imposed an undue burden on businesses. No court has halted or enjoined the 2024 Rule. While the Biden-era DOL mounted a vigorous defense in each case, the current DOL's retreat from the 2024 Rule renders the ultimate outcome of these cases unclear. For example, in one case pending before the Fifth Circuit (*Frisard's Transp., LLC v. United States*), the Court of Appeals stayed the proceeding after the government submitted a status report noting the DOL was in the process of reconsidering the 2024 Rule-at-issue in the litigation. Ultimately, the DOL's pivot to the more lenient standard could have massive implications for these proceedings.

The DOL Retracts the 2024 Rule

In its May 1 announcement, the DOL directed investigators to analyze a worker's status under the longstanding "economic reality" test, described in the Department's 2008 Fact Sheet 13 and 2019 Opinion Letter. The more traditional economic realities test looks at various factors to determine whether a worker is actually in business for themselves (and therefore a contractor) or dependent on the hiring entity (and thus an employee). These factors include:

1. Whether the work is integral to the hiring entity's business;
2. The permanency of the parties' relationship;
3. The contractor's investments in facilities or equipment;
4. The degree of control by the hiring entity over the contractor;
5. The contractor's opportunity for profit or loss;
6. The amount of independent judgment or initiative required in marketplace competition for the contractor to succeed; and
7. The degree of independence with which the contractor organizes and operates their business.

This traditional economic reality test is widely considered more employer-friendly. It is highly-likely that the DOL under President Trump will issue new, formal rulemaking on the subject in the near future.

Employer Takeaways

Regardless of the DOL's announcement, employers should remain vigilant and ensure they are compliant with applicable classification rules; which greatly vary by jurisdiction.

For example, certain states' classification standards far outpace federal guidelines and are more employee friendly. California, New Jersey, and Massachusetts use the much stricter "ABC test" to determine whether a worker is an independent contractor. Under that test, employers must prove (1) a worker is free from the hiring entity's control and direction, (2) the work is outside the hiring entity's usual course of business, and (3) the worker is customarily engaged in an independently established trade, occupation, or business. Employers must prove all three elements to properly classify a worker as an independent contractor.

Employers should also closely monitor regulatory developments. As noted above, it is highly likely that the DOL will implement a new final rule in the near future. If and when that occurs, employers should be prepared for accompanying changes and evaluate their existing worker classifications. Given the shifting administrative environment, it is crucial that employers stay flexible in order to *both* maximize opportunities presented by favorable changes and, conversely, be prepared if—or

when—the regulatory winds shift once more.

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