BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

DOL FINALIZES NEW INDEPENDENT CONTRACTOR RULE: WHAT EMPLOYERS SHOULD KNOW

November 19, 2024

On November 19, 2026, the U.S. Department of Labor ("DOL") announced a final rule revising the federal standard for determining whether a worker is an employee or an independent contractor.

The new rule replaces the broader six-factor analysis adopted in 2024 with a more streamlined "economic reality" test focused on whether a worker is genuinely in business for themselves or economically dependent on the business providing the work.

What Is Changing?

The new analysis places the greatest emphasis on two "core factors":

- The nature and degree of control the worker exercises over the work; and
- The worker's opportunity for profit or loss based on initiative, investment or managerial skill.

Other considerations include:

- The level of skill required;
- The permanence of the working relationship; and
- Whether the work is part of an integrated unit of the company's production process.

The parties' actual working practices, not merely the language contained in an independent-contractor agreement, will remain central to the analysis.

The DOL is also applying the new standard under the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act, both of which incorporate the Fair Labor Standards Act's definition of employment.

What Should Businesses Do Now?

Businesses that engage independent contractors should consider:

- Reviewing existing contractor relationships under the new factors;
- Confirming that contractors exercise meaningful control over how their work is performed;
- Evaluating whether contractors have a genuine opportunity for profit or loss;
- Comparing written agreements with the parties' actual practices;
- Training managers not to supervise contractors in the same manner as employees; and
- Reviewing contractor classifications periodically as working relationships evolve.

The New Rule Does Not Eliminate Misclassification Risk

This rule may make it easier for some workers to qualify as independent contractors under federal wage-and-hour law, but it does not create an automatic safe harbor.

Different classification standards may apply under federal tax law, the National Labor Relations Act and state or local laws. A worker may therefore qualify as an independent contractor under one law but be considered an employee under another. Workers also cannot waive employee status simply by agreeing to be treated as contractors.

Businesses should evaluate each relationship based on its actual facts rather than relying exclusively on a contract, job title or the worker's preference.

Examples of Economic Reality Factors Applied

The DOL published examples of the application of the Economic Reality Factors which may be found at https://www.dol.gov/agencies/whd/flsa/misclassification/employee-or-independent-contractor-status-examples.

Berger Singerman's Labor & Employment Team is available to assist businesses in reviewing worker classifications, contractor agreements and workplace practices under the new rule. Please feel free to contact a member of our Labor & Employment Team with any questions.

Related Team Member(s)

Andrew B. Zelman