

Insights, News & Events

# PEO POINTERS: NEW CONTRACTOR RULE MEANS PEOS NEED TO DO THESE 4 THINGS

Insights  
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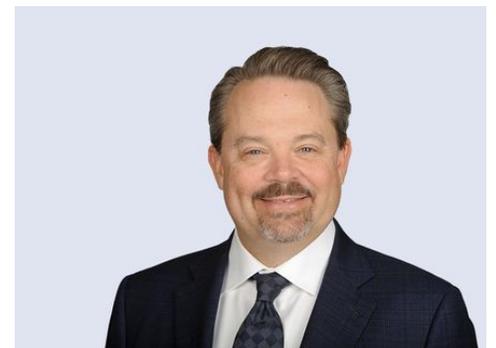
Welcome to “PEO Pointers,” a regular series of quick-read alerts to keep PEOs and their client companies up to speed on the latest issues affecting the industry and what they can do to ensure compliance. Today’s topic: what are the two things you need to do now that the federal government has released the final independent contractor rule? [And we’ll dive deeper into compliance challenges and strategies during the [Fisher Phillips’ PeopleLaw Conference from January 24-26](#), so make sure you register today.]

You probably saw the news a few days ago that the Department of Labor finalized a rule to completely restructure the way that independent contractors are classified, making it much harder for businesses to use 1099 labor and more likely that workers will be considered W-2 employees. It will reinstate a more complex analysis that focuses on the “totality of the circumstances” to make the determination, using an employee-friendly interpretation of how each of the factors in the test should be applied. [You can read all about the change and our recommendations to businesses here.](#)

Importantly, DOL’s six-factor test includes an analysis whether the work performed is an integral part of the potential employer’s business, which careful readers will recognize as being similar to the “usual course of business” prong in the ABC test used in California and other states. You can expect that this factor will be a key focus in enforcement actions.

## PEO’s 4-Step Plan

## Related People



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Your clients no doubt have questions about this development, especially since the news was widely reported in mainstream media outlets. Here are the four things you need to do to prepare for the big change on the way.

- 1. Get Up to Speed:** First and foremost, your human resources consultants and personnel will need to familiarize themselves with the change and the new rule slated to come into effect on March 11. Sure, there's a chance that the effective date gets pushed back or otherwise delayed by litigation, but you can't take that risk. You can expect clients to start reaching out with increasing frequency in the next two months, and your staff needs to be ready to field these inquiries. Make sure they digest our Insight and reach out to your FP attorney to learn about other educational opportunities so they are armed and ready.
- 2. Address Potential Audit Triggers.** Employers that report many independent contractor payments and fewer wage payments under their employer identification number may inadvertently become a target for state workforce agency audits. This may be a good time to do a quick review of your payments and take steps to reduce audit risks.
- 3. Make Sure Clients Are Requiring Workers' Compensation Coverage for Their Independent Contractors.** There are many examples of PEOs being held responsible under certain circumstances when a client's independent contractor is injured and there is no coverage. Your service agreement should address this issue and your client onboarding and renewal practices should incorporate this topic.
- 4. Update Your Service Agreements:** You've heard us say it before, and perhaps you set aside the advice because you didn't see the need for such a big change. The time is now to take this recommendation seriously. You will want to amend your agreement to make clear that your clients are solely responsible for issues relating to their independent contractors – including those voluntarily or involuntarily reclassified as contractors. You will also want to make sure your agreement has strong indemnification language to shield you against issues related to a classification dispute. Reach out to your FP attorney if you need help with this assignment.

**Learn More!**

We invite you to join us at the Terranea Resort in Rancho Palos Verdes, California, for the [annual Fisher Phillips' PeopleLaw Conference on January 24-26](#), where we'll discuss issues related to compliance challenges – and many other topics – in depth. We'll bring together thought leaders in the PEO, staffing, and gig economy industries to discuss common legal challenges and solutions, and you'll hear from our firm's PEO and Staffing Group lawyers, along with industry association executives, on the latest trends in a series of engaging and interactive sessions. Each session will provide you practical skills you can put to use right away. You'll also have plenty of time to network with your peers to gain invaluable insights and learn from each other. [You can learn more about the conference and register by clicking through here.](#)

## Conclusion

For more information, reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our [PEO and Staffing Team](#). Make sure to [subscribe to our FP Insights](#) to make sure you don't miss our next edition and any other developing news that breaks in the interim.