

Insights, News & Events

INDEPENDENT CONTRACTOR CLASSIFICATION: NAVIGATING THE NEW DOL RULE AND LATEST NLRB STANDARD

Strafford

Event

Mar 20, 2024

1:00 pm - 2:30 pm EDT

This CLE webinar will guide practitioners through the maze of guidelines and factors related to classifying workers as independent contractors that have resulted from the DOL's new rule and the NLRB's standard reestablished in the recent Atlanta Opera decision. The panel will address the analyses that should be conducted by employers as required by each agency, as well as state law considerations, to mitigate risk and costly penalties that could result from misclassification.

Determining whether to classify workers as independent contractors or employees remains a complex and risky decision for counsel and employers with new rules and standards recently issued by the DOL and NLRB that counsel should understand so they can guide their clients to avoid the risk of misclassification.

The DOL's new rule related to independent contractor classification under the FLSA, effective Mar. 11, 2024, overturns the 2021 rule and codifies the "economic realities" test as the definitive analysis for classifying workers under the FLSA. The rule provides six factors to determine the degree of a worker's economic dependence on an employer with no clear bright line rules and no single factor being dispositive. To complicate matters, the rule refers to

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unenumerated “additional factors” that may be considered to account for all relevant facts “regardless of whether those facts fit within one of the six enumerated factors.”

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The DOL’s rule was issued just months after the NLRB’s *The Atlanta Opera Inc.* (2023) decision in which it, too, rescinded the prior standard and established a common law multi-factor analysis. The new standard evaluates independent contractor status “in light of the pertinent common-law agency principles” including the extent of control by the employer, the skill required in the occupation, and the method of payment. As with the DOL analysis, no one factor is dispositive.

In addition to federal rules, state law should be considered when performing an independent contractor analysis. Many states have adopted the stricter “ABC test” which weighs heavily in favor of classifying workers as employees.

Listen as our expert panel guides practitioners through the new DOL rule and NLRB standard of analysis for determining independent contractor status. The panel will also address notable state law considerations, discuss potential penalties for noncompliance, and consider best practices for counsel.

This webinar is hosted by Strafford.