

# DOL EASING UP ON INDEPENDENT CONTRACTOR MISCLASSIFICATION ENFORCEMENT: 3 KEY POINTS ON THIS BIG WIN FOR BUSINESSES

Insights  
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Businesses that rely on freelancers or the “gig economy” have cause for optimism now that the Department of Labor just announced it will no longer enforce a Biden-era final rule that made it harder to classify workers as independent contractors. While the DOL has not yet rescinded the 2024 rule, the agency said that it continues to work toward returning to a simpler standard for determining whether a worker is an employee or an independent contractor under federal wage and hour rules. In the meantime, the 2024 rule, which is currently under challenge in federal courts, remains in effect for private litigation purposes. Here are a few key points you need to know about this latest development.

## Quick Background

- **What's this about?** During President Trump’s first term, the DOL established a more lenient independent contractor standard that made it easier for businesses to classify workers as independent contractors. Last year, the Biden administration issued a final rule rescinding that standard and reinstating a more complex analysis for determining whether a worker is an independent contractor or an employee who is entitled to minimum wage, overtime pay, and other protections under the Fair Labor Standards Act (FLSA). Read more about the 2024 final rule [here](#).
- **Then what happened?** Business groups immediately challenged the 2024 final rule in court (and five lawsuits are still playing out). But once President Trump returned to the White House, the DOL sought to put that litigation on

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hold while it reconsiders the Biden-era independent contractor standard, including whether to rescind it altogether.

- **What's the latest?** The DOL [announced](#) on May 1 that its Wage and Hour Division (WHD) issued [new enforcement guidance](#) directing agency investigators not to apply the 2024 rule's complex analysis in current enforcement matters. Instead, the WHD plans to apply "longstanding principles." The agency will also rely on a reinstated [2019 Opinion Letter](#) addressing classification issues in the context of virtual marketplace platforms. Read on for three key points on the latest developments.

### 3 Key Points for Businesses

#### 1. New Enforcement Standards Effective May 1

As of May 1, the WHD will enforce the FLSA in accordance with "longstanding principles" outlined in agency guidance predating the 2024 final rule. The agency is now applying the traditional economic realities test by weighing multiple factors and determining whether the worker is in business for themselves (thus a contractor) or economically dependent on the hiring entity (and thus an employee).

The following factors guide the assessment, though additional factors may be considered:

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



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The Biden rule applied an employee-friendly interpretation of how relevant factors should be applied – leading to more workers potentially being classified as employees. The DOL under President Trump now returns to an interpretation that gives businesses more flexibility – and we expect the DOL ultimately will issue a new rule revising the standard even further.

Note, though, that the National Labor Relations Board and other federal agencies may apply different independent contractor tests in other contexts.

### **2. The 2024 Independent Contractor Rule Remains in Effect – For Now**

While the Trump's DOL will no longer enforce the 2024 final rule, it has not yet rescinded it or issued a new proposed rule to replace it (though we expect that it will do so later this year). The agency's May 1 guidance emphasizes that, until it takes further action, the 2024 rule remains in effect for purposes of private litigation.

### **3. State Rules Still Apply**

Significantly, the DOL's test applies only to the federal FLSA and many states have their own tests that are applied to state-level wage and hour claims. Some states like [California](#) and New Jersey apply the ABC test that makes it much harder to establish an independent contractor relationship. Other states, such as Arizona, have laws protecting the independent contractor relationship if certain criteria are met. Consequently, it is important for businesses to identify where their workers are located and what law applies.

### **What Should You Do Now?**

Businesses can breathe some sigh of relief now that the DOL has dropped enforcement of the 2024 final rule and has signaled its plans to return to more lenient contractor classification rules. Stay tuned for regulatory developments from the agency and for updates in the pending lawsuits challenging the existing final rule.

It is also important to remember that independent contractor rules and enforcement positions often change with a new administration. Any changes you make in your business practices now to take advantage of the latest enforcement guidance may be problematic in the future. Consider

whether the changes you make now can be easily reversed in the future if necessary.

Regardless of this favorable development, there still is a risk of private litigation, especially under state laws that carrier double and triple damages. Businesses should also work closely with counsel on worker classification issues, as errors can result in major consequences with huge costs for businesses. Experienced counsel can help you evaluate your programs and minimize your risks.

## **Conclusion**

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have compliance questions, consult with your Fisher Phillips attorney, the authors of this Insight, or any member of our [Wage and Hour Practice Group](#).