

DOL INDEPENDENT CONTRACTOR PROPOSAL OFFERS CLARITY FOR PRIVATE MEMBERSHIP CLUBS: 4 STEPS TO PREPARE

Insights
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DOL Independent Contractor Proposal Offers Clarity for Private Membership Clubs: 4 Steps to Prepare

Private membership clubs may soon receive much-sought-after clarity on how to classify tricky positions like golf and tennis professionals, deck hands, and caddies. The Department of Labor recently proposed a rule to revise its framework for distinguishing between employees and independent contractors by applying the “economic reality” test. This development is particularly significant for private membership clubs, which often rely on a mix of employees and independent contractors. The classification of club positions as employees versus independent contractors is not always clear, and potential penalties for misclassification make it essential for private membership clubs to regularly audit your practices and ensure compliance. This Insight will cover everything you need to know about potential compliance hiccups and four steps to help you prepare as the DOL finalizes this rule.

What’s Changing?

The DOL recently [proposed an updated test](#) for agency investigators to use when determining whether a worker is an employee or independent contractor for purposes of minimum wage and overtime compliance. Workers who are independent contractors are considered in business for themselves and are not covered by the federal Fair Labor Standards Act (FLSA).

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The DOL's proposal includes five factors to evaluate whether a worker should be classified as a contractor or is an employee who is **economically dependent** on an employer for work. This analysis is referred to as the "economic reality" test, and the key focus is the individual's reliance on the employer for work.

The DOL explained that "economic dependence" does not turn on whether a worker relies on an alleged employer as their primary source of income or for basic necessities. Instead, it "examines whether workers are dependent on a particular business for their continued employment." The analysis is governed **by the actual practice**, not contractual labels or theoretical rights.

The proposed rule identifies **two core factors** as carrying the greatest weight in the determination:

1. The nature and degree of control over the work
2. The individual's opportunity for profit or loss

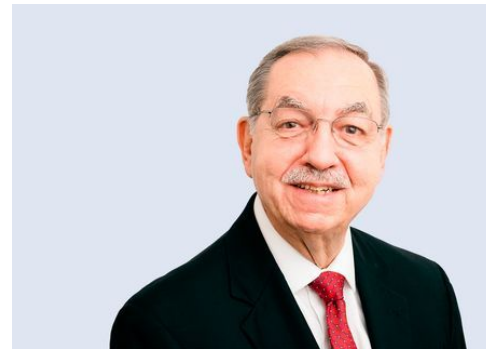
If both factors point towards the same classification, there is a substantial likelihood that the individual's classification is accurate.

For example:

- Golf and tennis professionals who own and control merchandise, receive no club profit from shop operations, and exercise total control over their teaching methods without club interference are likely to be classified as independent contractors.
- On the other hand, golf and tennis professionals whose operations are controlled by the club, who are guaranteed member charges, and who depend on club members for patronage are likely to be classified as employees.

In addition to the two core factors above, **three additional factors** are considered in every case to help guide the analysis of the individual's economic dependence for work:

3. The amount of skill required for work
4. The degree of permanence of the working relationship



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5. Whether work is part of an integrated unit of production.

For example:

- Club maintenance workers who are not directed on how to perform their work, are not required to work set hours, perform project-specific (rather than ongoing) services, and are permitted to hire their own helpers, are more likely to be classified as independent contractors.
- In contrast, club maintenance workers who provide ongoing services instead of project-specific work, and who do not hire their own workers, provide their own tools, or set their own hours, are more likely to be classified as employees.

Common Misclassification Mistakes: Golf Caddies

Golf caddies present a cautionary tale of how worker classification can be particularly complex for private membership clubs, with conflicting outcomes depending on the specific working arrangement.

A recent federal case, *Anderson v. Hudson National Golf Club*, demonstrates the ongoing uncertainty in this area. Although the issues in this case related to various alleged wage-and-hour deficiencies and not contractor misclassification, it provides insight into modern caddie operations. For example, in the court's discussion regarding the caddies' status as employees, the court noted that the club required golfers to use Hudson-National caddies, assigned caddies to work with specific golfers, and that caddies were not free to reject work with assigned golfers. The court further noted that caddies were required to wear uniforms, comply with the club's internal rules, and attend "rally" meetings before each golf outing. Such arrangements suggest employee rather than independent contractor classification.

Next Steps for Private Membership Clubs

1. Audit your current work arrangements. Consider how the changes will impact your business model if the rule is finalized.

2. Review state rules to ensure you are still in compliance. Many states have stricter independent contractor standards than the federal level. You will still need to ensure your work arrangements comply with those rules, despite the more lenient federal proposal.

3. Update current policies and train hiring managers. Be sure that managers discuss worker classification with HR before seeking golf or tennis professionals, caddies, ground crew, maintenance workers, or other independent contractors.

4. Consult with legal counsel if you are uncertain about the impact of the new federal proposal on your club operations. Your FP attorney can assist you in auditing your wage and hour practices and developing a plan of action in response to the new rule when it is finalized.

Conclusion

If you have questions about the new independent contractor proposal, please contact the authors of this Insight, your FP legal counsel, or any member of our [Non-Profit and Tax-Exempt Organizations](#) and [Wage and Hour](#) teams. We will continue to monitor developments related to this rulemaking, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information.