

LEGAL UPDATE

DOL Proposes Changes to FLSA Independent Contractor Classification Test

On Sept. 22, 2020, the U.S. Department of Labor (DOL) [announced a proposed rule](#) to clarify how employers should classify their workers as either employees or independent contractors. Accurate worker classification enables employers to determine which obligations, protections, rights and benefits apply to their employees under the law.

Economic Realities Test

[Currently](#), there is no single rule or test for worker classification under the Fair Labor Standards Act (FLSA). This proposal would establish a five-factor “economic realities test” to determine a worker’s status under the FLSA. The five factors are:

1. The nature and degree of the worker’s control over the work.
2. The worker’s opportunity for profit or loss based on initiative and/or investment.
3. The amount of skill required for the work.
4. The degree of permanence of the working relationship between the worker and the potential employer.
5. Whether the work is part of an integrated unit of production.

The proposed rule identifies the first two factors as “core factors,” leaving the remaining three as “additional guideposts” in the analysis.

Emphasis on Actual Practice

Finally, the proposed rule recommends that during the classification process, employers should evaluate the workers’ actual job responsibilities, rather than his or her contractual or theoretical job description.

Important Dates

Sept. 22, 2020

DOL announces proposed rule to clarify application of worker classification test.

Sept. 25, 2020

Proposed rule is published in Federal Register.

Oct. 26, 2020

Deadline for submitting written comments on proposed rule.

The DOL said it believes the proposed changes will increase precision and predictability in the application of the economic realities test.

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