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ADVOCACY UPDATE

DOL Introduces New Rules Redefining Independent Contractor Status

On January 9th, the U.S. Department of Labor (DOL) announced a new regulation that would revise the Biden Administration’s interpretation of the Fair Labor Standards Act’s (FLSA) classification on whether a worker is determined to be an independent contractor. The agency first proposed these rules in October 2022, and the new rules will consider six factors when examining the relationship between a worker and a potential employer when considering if they are an independent contractor. These factors are:

- The worker’s opportunity for profit or loss
- Investments made by the worker and the employer
- The degree of permanence of the work relationship
- The nature and degree of control over the performance of the work
- The extent to which the work performed is an integral part of the employer’s business
- Use of the worker’s skill and initiative

The DOL believes this rule will help workers who are currently misclassified and lose out on minimum wage, overtime pay, and other protections under the FLSA. They also worked to clarify some specific issues brought up during the comment period, including stating actions taken by a potential employer for the sole purpose of complying with applicable federal, state, tribal, or local laws and regulations do not constitute control indicative of an employment relationship. They also clarify that costs to a worker that a potential employer unilaterally imposes are not investments indicative of independent contractor status.

Separately, the DOL rescinded a Trump Administration independent contractor rule enacted during that administration's final weeks. In May 2021, the Biden Administration tried to rescind this rule, but federal courts put it back into effect until this new process was enacted.

The rule is slated to take effect on March 11, 2024, but there is an expectation that this will be pushed back due to likely legal challenges.

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