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DOL Proposes New Rule on Worker Classification: Key Changes and Implications for Employers

Executive Summary

- **What’s new:** The Department of Labor has proposed a new rule on worker classification that would rescind a 2024 rule and largely reinstate the “core factors” analysis, with targeted modifications. The proposed rule would provide an updated framework for determining whether a worker is an employee or an independent contractor under the Fair Labor Standards Act, Family and Medical Leave Act and Migrant and Seasonal Agricultural Worker Protection Act.
- **Why it matters:** Worker classification remains a high-stakes compliance issue for employers, with significant legal, financial and operational consequences for misclassification.
- **What to do next:** Employers should consider reviewing their current worker classification practices in light of the proposed “core factors” analysis, updating internal policies and training as needed, and monitoring the rulemaking process closely.

On February 27, 2026, the Department of Labor (DOL) published a proposed rule clarifying the analysis for classifying workers as employees or independent contractors (the Proposed Rule). The Proposed Rule would rescind the analysis set forth in 29 CFR 795 (the 2024 Rule) and replace it with the analysis previously published and adopted in 29 CFR 7 80, 788 and 795 (the 2021 Rule), with some modifications.

The Proposed Rule aims to provide greater clarity and predictability in determining whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

This development is particularly significant for employers navigating the complex landscape of worker classification, as misclassification can result in substantial legal and financial exposure.

Key Features of the Proposed Rule

The Proposed Rule moves away from the 2024 Rule’s six-factor “totality of the circumstances” test, which did not prioritize any particular factors and advised that “the weight to give each factor may depend on the facts and circumstances of the particular relationship.”

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The Six Factors

The 2024 Rule identified six factors as “tools or guides to conduct a totality of the circumstances analysis”:

1. Opportunity for profit or loss depending on managerial skill.
2. Investments by the workers and the potential employer.
3. Degree of permanence of the work relationship.
4. Nature and degree of control.
5. Extent to which the work performed is an integral part of the potential employer’s business.
6. Skill and initiative.

The Proposed Rule substantively uses the same six factors but reorganizes and clarifies them, and in particular emphasizes two “core” factors as most probative in the classification analysis:

1. **Nature and degree of control over the work:** Whether the worker or the potential employer exercises substantial control over key aspects of the work, such as scheduling, project selection and the ability to work for others. Under the Proposed Rule, placing certain compliance requirements on the worker — including legal obligations, health and safety standards, statutorily mandated drug and alcohol testing requirements, insurance carrying requirements and contractually agreed upon deadlines or quality control standards — is not on its own indicative of whether an employment relationship exists.
2. **Opportunity for profit or loss:** Whether the worker can affect their earnings through initiative (such as managerial skill or business acumen) or investment (such as hiring helpers or purchasing equipment). Under the Proposed Rule, a worker may be an employee if they are unable to affect their earnings or can only do so by working more hours or faster.

If both core factors point toward the same classification, there is a “substantial likelihood” that this is the correct classification.

Additional Factors

Three additional factors serve as “guideposts” but are generally less probative:

- **Skill required:** Whether the work requires specialized skill or training not provided by the employer.
- **Permanence of the relationship:** Whether the relationship is indefinite or continuous (favoring employee status) or definite and sporadic (favoring independent contractor status).
- **Integration into the employer’s production process:** Whether the work is segregable from the employer’s production process (favoring independent contractor status) or a component of an integrated process (favoring employee status).

Other factors may be considered only if they are relevant to whether the worker is in business for themselves or economically dependent on the employer.

The Proposed Rule underscores that the “actual practice” of the parties is more relevant than what may be contractually or theoretically possible. For example, a worker’s theoretical ability to negotiate prices or work for competitors is less meaningful if, in practice, the worker does not do so.

Next Steps

The deadline for submitting public comments on the Proposed Rule is April 28, 2026. Employers and other interested parties may wish to submit comments to the Proposed Rule. In addition to considering whether to submit comments to the Proposed Rule, employers should consider the following:

- **Review current classification practices:** Assess current independent contractor relationships in light of the proposed “core factors” analysis.
- **Be prepared to update policies and training:** Ensure human resources and legal teams are familiar with the proposed changes and are prepared to implement any necessary adjustments.
- **Monitor developments:** Stay informed on the status of the rulemaking and any related litigation or enforcement guidance.
- **Consider state laws:** State laws may impose additional worker classification requirements and criteria. Employers must comply with both federal and state laws.