

DOL Withdraws Trump-Era Independent Contractor Rule

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During the Trump administration, the Department of Labor (DOL) [issued a new rule](#) regarding the classification of independent contractors. Designed to streamline how a company determines whether a worker is an employee or independent contractor, the rule narrowed the factors in the “economic realities” test and focused the analysis on the two “core factors” of control and the opportunity for profit and loss. The proposed regulations were set to go into effect on March 8, 2021. With the change in administration, the DOL initially pushed the effective date back to May 7, 2021, to allow for further review and consideration. The DOL announced on May 5, 2021, that it is withdrawing the rule altogether.

In support of withdrawing the rule, the DOL said that the “[r]ule’s elevation of the control and opportunity for profit or loss factors is in tension with the language and purpose of the [Fair Labor Standards Act] as well as the position, expressed by the Supreme Court and in appellate cases from across the circuits, that no single factor is determinative in the analysis of whether a worker is an employee or independent contractor.” The DOL further stated that the proposed rule’s narrowing of the factors considered in the economic realities test warranted withdrawal of the rule.

Notably, the DOL has not indicated whether it will offer a new rule on the topic. Due to the fact-specific analysis required—and the shifting law, regulations, and guidance on this topic at both the federal and state levels—employers should consult with legal counsel when determining whether a worker is an employee or independent contractor.

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