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Department of Labor Finalizes Independent Contractor Rule

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On January 9, the Department of Labor (DOL) issued a [final rule](#) on “Independent Contractor Classification Under the Fair Labor Standards Act (FLSA).” The final rule rescinds the Trump Administration’s [independent contractor rule](#) finalized by the DOL on January 7, 2021. According to the DOL press release, “The rule provides guidance on the proper classification and seeks to combat employee misclassification, a serious problem that impacts workers’ rights to minimum wage and overtime pay, facilitates wage theft, allows some employers to undercut their law-abiding competition and hurts the economy at-large.” The final rule is effective March 11, 2024.

The rule will not directly impact how courts determine worker classification but rather dictates DOL’s own enforcement activities. It applies the following six factors to analyze employee or independent contractor status under the FLSA:

1. opportunity for profit or loss depending on managerial skill;
2. investments by the worker 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;
and
6. skill and initiative.

The final rule includes a detailed discussion of how scheduling, supervision, price-setting, and the ability to work for others should be considered when analyzing the nature and degree of control over a worker.

Along with its coalition partners, MHI previously weighed in to oppose overturning the 2021 rule. The final rule will likely face significant pushback from both industry and Republicans in Congress. The U.S. Chamber of Commerce has also indicated that it is considering pursuing litigation to overturn the final rule. ##

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