



## **U.S. DEPARTMENT OF LABOR**

### **News Release**

# **US DEPARTMENT OF LABOR ANNOUNCES PROPOSED RULE ON CLASSIFYING EMPLOYEES, INDEPENDENT CONTRACTORS; SEEKS TO RETURN TO LONGSTANDING INTERPRETATION**

## ***Misclassification continues to deny workers' rightful wages; hurt businesses, economy***

**WASHINGTON** – The U.S. Department of Labor will publish a [Notice of Proposed Rulemaking on Oct. 13](#) to help employers and workers determine whether a worker is an employee or an independent contractor under the [Fair Labor Standards Act](#).

The proposed rule would provide guidance on classifying workers and seeks to combat employee misclassification. Misclassification is a serious issue that denies workers' rights and protections under federal labor standards, promotes wage theft, allows certain employers to gain an unfair advantage over law-abiding businesses, and hurts the economy at-large.

The NPRM proposes a framework more consistent with longstanding judicial precedent on which employers have relied to classify workers as employees or independent contractors under the FLSA. The department believes the new rule would preserve essential worker rights and provide consistency for regulated entities.

“While independent contractors have an important role in our economy, we have seen in many cases that employers misclassify their employees as independent contractors, particularly among our nation’s most vulnerable workers,” said Secretary of Labor Marty Walsh. “Misclassification deprives workers of their federal labor protections, including their right to be paid their full, legally earned wages. The Department of Labor remains committed to addressing the issue of misclassification.”

Specifically, the proposed rule would do the following:

- Align the department’s approach with courts’ FLSA interpretation and the economic reality test.
- Restore the multifactor, totality-of-the-circumstances analysis to determine whether a worker is an employee or an independent contractor under the FLSA.
- Ensure that all factors are analyzed without assigning a predetermined weight to a particular factor or set of factors.
- Revert to the longstanding interpretation of the economic reality factors. These factors include the investment, control and opportunity for profit or loss factors. The integral factor, which considers whether the work is integral to the employer’s business, is also included.
- Assist with the proper classification of employees and independent contractors under the FLSA.
- Rescind the 2021 Independent Contractor Rule.

The department is responsible for ensuring that employers do not misclassify FLSA-covered workers as independent contractors and deprive them of their legal wage and hour protections. Misclassification denies basic worker protections such as minimum wage and overtime pay and affects a wide range of workers in the home care, janitorial services, trucking, delivery, construction, personal services, and hospitality and restaurant industries, among others.

Before publication of today’s proposed rulemaking, the department’s Wage and Hour Division considered feedback shared by stakeholders in forums during the summer of 2022 and will now solicit comments on the proposed rule from interested parties. The division encourages all stakeholders to participate in the regulatory process. Comments, which must be submitted from Oct. 13 to Nov. 28, 2022, [should be submitted online](#) or in writing to the Division of Regulations, Legislation and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave. NW, Washington, DC 20210.

[Learn more about the Wage and Hour Division.](#)

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