

# Roundup: Employer resources on DOL's final independent contractor rule

Law & Policy Group

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Feb. 12, 2024; updated June 10, 2025



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## Section 1

# Introduction

On Jan. 9, 2024, the Department of Labor (DOL) announced a final rule that revises how to determine if an individual is an independent contractor or an employee entitled to minimum wage, overtime and other protections under the federal Fair Labor Standards Act (FLSA). The controversial rule took effect on March 11, 2024. On May 1, 2025, the DOL announced in a Field Assistance Bulletin that it will no longer enforce the rule. The DOL said it will reconsider the rule, including whether to rescind it. In the meantime, the DOL will enforce the independent contractor misclassification in accordance with a 2008 Fact Sheet, and as further informed by Opinion Letter FLSA 2019-6.

To provide employers with some information about the rule and the varying aspects and issues to consider, this roundup provides links to government information, third-party analyses, news articles and viewpoints. The aggregated content in each section is organized in reverse chronological order and is by no means comprehensive. The content also does not necessarily reflect Mercer's or the authors' point of view on the subject.

## Section 2

# Highlights of the rule

On Jan. 9, 2024, the DOL [announced](#) a [final rule](#) that revises how to determine if an individual is an independent contractor or an employee entitled to minimum wage, overtime and other protections under the federal Fair Labor Standards Act (FLSA). The final rule rescinds the [2021 rule](#) issued by the Trump administration that made it easier to achieve independent contractor status and aligns the DOL's approach with longstanding judicial precedent. The final rule took effect on March 11, 2024, and is similar to the [proposed rule](#) issued in October 2022 (see this [GRIST](#)). [FAQs](#) and a [Fact Sheet](#) are also available.

On May 1, 2025, the DOL announced in a [Field Assistance Bulletin](#) that it will no longer enforce the rule. The DOL said it will reconsider the rule, including whether to rescind it. In the meantime, the DOL will enforce the independent contractor misclassification in accordance with a [2008 Fact Sheet](#), and as further informed by [Opinion Letter FLSA 2019-6](#).

The rule restored the multifactor, totality-of-the-circumstances analysis, in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity. Under the economic reality test, the consideration is whether workers are either economically dependent on the employer for work (employees) or are in business for themselves (independent contractors). The six economic reality factors to consider include:

- Opportunity for profit or loss depending on managerial skill
- Investments by the worker and the potential employer
- Degree of permanence of the work relationship
- Nature and degree of control
- Extent to which the work performed is an integral part of the potential employer's business
- Worker's skill and initiative.

Additional factors may also be considered if they are relevant to the overall question of economic dependence.

In March 2024, the House of Representatives Committee on Education and the Workforce advanced a proposal to repeal the rule. Also, the Chamber of Commerce (among other organizations) [opposes](#) the rule saying that it is "clearly biased towards declaring most independent contractors as employees" and is considering a legal challenge. Some companies (like those in the ride-share, construction, trucking and other industries) were concerned about the rule's effect on their businesses, but the changes do not appear to be as significant as anticipated. For example, Uber said in a [statement](#) that "[t]his rule does not materially change the law under which we operate" and noted that "DOL officials have repeatedly stressed that the rule is intended to address misclassification of workers in traditional industries, and that it is unlikely to result in any large-scale classification changes."

While the rule establishes the DOL Wage and Hour Division standards, it is not binding on courts, or on most other laws/rules that address misclassification, such as the Affordable

Care Act employer-shared responsibility, the [Internal Revenue Code, ERISA](#), and the [National Labor Relations Act](#) (see this [GRIST](#)). However, employers typically do not make separate determinations under each law, so this final rule may become the baseline determination. In June 2023, the National Labor Relations Board [modified](#) its independent contractor standard, returning to the 2014 standard. The [federal FMLA](#) uses the FLSA definition of employee, so the rule will be applied.

## Section 3

# Law firm analyses

- [DOL reinstates virtual marketplace platform opinion letter signaling return to relaxed independent contractor test and acceptance of gig platform model](#) (Littler, May 27, 2025)
- [DOL announces enforcement position on independent contractor rule](#) (Bass Berry + Sims, May 22, 2025)
- [Department of Labor's new guidance on enforcing Biden Administration's independent contractor rule](#) (Greenberg Traurig, May 16, 2025)
- [DOL issues revised independent contractor misclassification guidance](#) (Crowell, May 13, 2025)
- [Businesses get a break: DOL won't enforce 2024 independent contractor rule](#) (Jackson Lewis, May 13, 2025)
- [DOL alters enforcement position on independent contractors: What does it mean for employers, including manufacturers and franchisors?](#) (Foley, May 12, 2025)
- [DOL signals abandonment of current independent contractor rule](#) (Kelley Drye, May 12, 2025)
- [DOL to scrap prior independent contractor rule](#) (Hunton, May 12, 2025)
- [Department of Labor plans to rescind Biden's gig worker rule making it easier for companies to use independent contractors](#) (Nelson Mullins, May 5, 2025)
- [US Department of Labor announces it will no longer enforce 2025 independent contractor rule](#) (Ford Harrison, May 5, 2025)
- [DOL softens bite on independent contractor test](#) (Baker Hostetler, May 5, 2025)
- [DOL hits pause on enforcement of Biden-era independent contractor rule, suggest new or changed rule forthcoming](#) (Littler, May 2, 2025)
- [Navigating the 'new' normal: Understanding the DOL's independent contractor rule](#) (Hunton Andrews Kurth, April 2, 2024)
- [DOL's final rule on independent contractor classification likely is not the final word \(registration required\)](#) (law.com, March 25, 2024)
- [New DOL independent contractor goes into effect, while NLRB joint employer rule vacated at the eleventh hour](#) (Arnall Golden Gregory, March 21, 2024)
- [Independent contractor rule takes effect, but legal challenges mount](#) (Jackson Lewis, March 12, 2024)
- [The Department of Labor issues new final rule for independent contractor classification](#) (Sheppard Mullin, Feb. 14, 2024)

- [Declare your 'independents' — new DOL rule clarifies contractor classification](#) (Adams and Reese LLP, Feb. 12, 2024)
- [US Department of Labor publishes final rule on determining independent contractor status](#) (Buchanan, Feb. 2, 2024)
- [New independent contractor rule facing multiple legal challenges](#) (Epstein Becker Green, Jan. 31, 2024)
- [US Department of Labor issues final rule on independent contractor status](#) (Cooley, Jan. 31, 2024)
- [US Department of Labor finalizes independent contractor rule](#) (Day Pitney, Jan. 26, 2024)
- [DOL issues final independent contractor rule](#) (Vedder Price, Jan. 25, 2024)
- [The DOL issues a final rule returning the independent contractor classification analysis under the FLSA to a more employee-friendly test, forcing employers to think critically about their use of independent contractors in the workplace](#) (Mintz, Jan. 25, 2024)
- [The wait is over! The USDOL's 2024 new rule on independent contractor classification under the FLSA](#) (Ward and Smith, P.A., Jan. 19, 2024)
- [Five questions companies are asking about DOL's new independent contractor rule](#) (Perkins Coie, Jan. 18, 2024)
- [Freelancers file first lawsuit challenging Biden independent contractor rule](#) (Reuters, Jan. 17, 2024)
- [DOL narrows definition of 'independent contractor' under FLSA](#) (Nixon Peabody, Jan. 16, 2024)
- [U.S. Labor Department issues final rule on independent contractors](#) (Holland & Knight, Jan. 12, 2024)
- [Labor Department releases independent contractor final rule, revising standard](#) (Jackson Lewis, Jan. 11, 2024)
- [DOL announces final rule on determining independent contractor status](#) (Ogletree Deakins, Jan. 10, 2024)
- [DOL releases new independent contractor rule](#) (Proskauer, Jan. 9, 2024)
- [Businesses will struggle to classify workers as independent contractors thanks to new DOL rule: 5 takeaways](#) (Fisher Phillips, Jan. 9, 2024)

## Section 4

# News and viewpoints

- [Trump pause on DOL's gig worker rule has industry wanting more](#) (subscription required) (Bloomberg Law, May 16, 2025)
- [Trump Labor department pauses gig worker rule, plans repeal](#) (subscription required) (Bloomberg Law, May 1, 2025)
- [DOL moves to pause gig worker lawsuits, cancel Biden regulation](#) (subscription required) (Bloomberg Law, April 9, 2025)
- [Trump DOL pauses Biden independent contractor rule defense](#) (subscription required) (Bloomberg Law, Jan. 27, 2025)
- [Do gig workers do gigs or are they employees under new DOL rule?](#) (subscription required) (Bloomberg Law, April 3, 2024)
- [Committee votes 21-13 to undo the contentious regulation, paving the way for the measure to be considered by the full house](#) (Investment News, March 22, 2024)
- [House panel passes bill to quash DOL independent contractor rule](#) (Think Advisor, March 22, 2024)
- [US House panel approves repeal of Biden independent contractor rule](#) (Reuters, March 21, 2024)
- [Challenges to DOL's contractor rule: Mounting lawsuits explained](#) (subscription required) (Bloomberg Law, March 5, 2024)
- [New Department of Labor rule restores multifactor analysis for classifying workers as employees or independent contractors](#) (The National Law Review, Feb. 29, 2024)
- [Businesses win second chance at gig worker rule challenge](#) (Bloomberg Law, Feb. 20, 2024)
- [Collateral damage in the war on 'gig work'](#) (Yahoo News, Feb. 7, 2024)
- [Understanding driver earnings & expenses](#) (Lyft news, Feb. 6, 2024)
- [Lyft lets drivers keep 70% of earnings amid DOL rule shift](#) (Bloomberg Law, Feb. 6, 2024)
- [Lyft becomes first rideshare company to implement minimum pay for drivers](#) (Entrepreneur, Feb. 6, 2024)
- [Lyft says drivers will receive at least 70% of rider payments](#) (Yahoo Finance, Feb. 6, 2024)
- [Workers poised to get benefits as rule creates 'employees'](#) (Bloomberg, Jan. 29, 2024)
- [Labor department's new independent contractor rule could help workers recover lost wages — here's how](#) (CNBC, Jan. 23, 2024)



- [New worker classification rule could disrupt the US gig economy](#) (Investopedia, Jan. 20, 2024)
- ['Economic realities' test adds promise to DOL gig worker rule](#) (Bloomberg Law, Jan. 18, 2024)
- [Businesses seek speedy legal fight over new DOL gig worker rule](#) (Bloomberg Law, Jan. 18, 2024)
- [DOL's rule narrows scope of independent contractor classification](#) (SHRM, Jan. 10, 2024)
- [Can US independent contractor rule survive legal challenges, Congress?](#) (Reuters, Jan. 10, 2024)
- [Worker status rule garners trucking, builder ire more than Uber](#) (Bloomberg Law, Jan. 10, 2024)
- [How the new Biden administration gig-worker rule could impact California](#) (San Francisco Chronicle, Jan. 9, 2024)
- [Millions of gig workers could qualify as employees under new Biden-era rule](#) (subscription required) (The Washington Post, Jan. 9, 2024)
- [Biden administration revamps gig worker rule](#) (Axios, Jan. 9, 2024)
- [U.S. Chamber opposes harmful new DOL regulation on employee and independent contractor classification](#) (US Chamber of Commerce, Jan. 9, 2024)
- [Lyft's view on 2024 Department of Labor rule](#) (Lyft, Jan. 9, 2024)
- [Our statement on the US Department of Labor's worker classification rule](#) (Uber, Jan. 9, 2024)
- [New rule tightens worker classification standards; Uber, Lyft say their drivers won't be affected](#) (US News, Jan. 8, 2024)



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