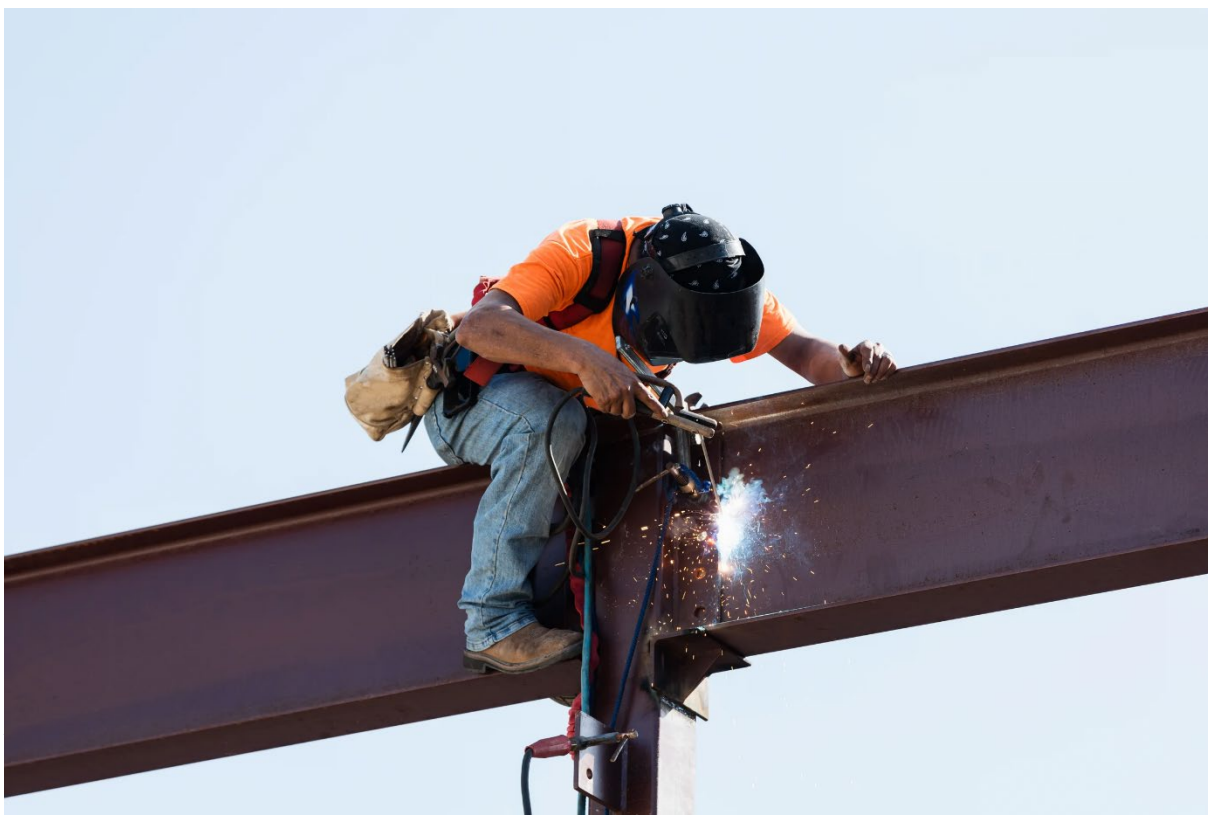


Roundup: Employer resources on DOL's proposed independent contractor rule

Law & Policy Group

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Section 1

Introduction

On February 26, 2026, the Department of Labor (DOL) proposed rules to revise its analysis for distinguishing between employees and independent contractors under the Fair Labor Standards Act (FLSA). The DOL proposes to rescind a 2024 rule issued by the Biden administration that it no longer applies in its investigations and replace it with the earlier streamlined analysis applied by the first Trump administration.

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 February 26, 2026, the Department of Labor (DOL) [proposed rules](#) to revise its analysis for distinguishing between employees and independent contractors under the Fair Labor Standards Act (FLSA). The DOL proposes to rescind a 2024 rule issued by the Biden administration that it no longer applies in its investigations and replace it with the earlier streamlined [analysis](#) applied by the first Trump administration.

On May 1, 2025, the DOL announced in a [Field Assistance Bulletin](#) that it will no longer enforce the 2024 rule. It is currently enforcing the independent contractor misclassification in accordance with a [2008 Fact Sheet](#), and as further informed by [Opinion Letter FLSA 2019-6](#).

The proposal:

- Adopts an “economic reality” test to determine a worker’s status as an employee or independent contractor, examining whether a worker is in business for him- or herself (independent contractor) or is economically dependent on a potential employer for work (employee)
- Identifies and explains two core factors: (1) the nature and degree of the worker’s control over the work, and (2) the worker’s opportunity for profit or loss based on initiative and/or investment. These are the factors that federal courts primarily consider to answer the question of whether a worker is economically dependent on someone else’s business or is in business for him- or herself.
- Identifies three other factors relevant to the analysis, particularly when the two core factors do not point to the same classification: (1) the amount of skill required for the work; (2) the degree of permanence of the working relationship between the worker and the potential employer; and (3) whether the work is part of an integrated unit of production; and also notes that additional factors may be considered in the analysis.
- Advises that the parties’ actual practices are more relevant than what may be contractually or theoretically possible
- Provides eight examples of how the economic reality factors would apply in certain real life situations.

[FAQs](#) on the proposal have also been issued, and comments can be submitted until April 28, 2026.

The DOL would apply this analysis to the Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), both of which

incorporate the FLSA's relevant definitions. 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.

Section 3

Law firm analyses

- [Worker classification in focus: DOL proposes rule on independent contractor status](#) (Ford Harrison, March 6, 2026)
- [US Department of Labor proposes return to 2021 independent contractor standard](#) (Krieg Devault, March 6, 2026)
- [DOL publishes proposed rule to rescind the 2024 Biden-era independent contractor test](#) (K & L Gates, March 6, 2026)
- [New proposed federal DOL independent contractor rule may not make a difference](#) (McCarter & English, March 6, 2026)
- [Proposed DOL rule would simplify independent contractor status — a little bit](#) (Baker Hostetler, March 5, 2026)
- [DOL yo-yo continues: The independent contractor rule](#) (Worklaw Network, March 5, 2026)
- [US Department of Labor seeks to clarify employee vs. independent contractor under federal wage and hour laws](#) (Peckar & Abramson, March 4, 2026)
- [DOL proposes to rescind 2024 independent contractor rule and reinstate 2021 framework](#) (Morgan Lewis, March 4, 2026)
- [DOL proposes new rule with a familiar five-factor test for worker classification](#) (Hunton, March 4, 2026)
- [DOL proposes return to core factors in independent contractor test: What energy sector employers need to know](#) (Bracewell, March 4, 2026)
- [What employers need to know about new DOL changes to independent contractor rule](#) (Nelson Mullins, March 4, 2026)
- [DOL's proposed 2026 independent contractor rule: What employers need to know](#) (Jackson Lewis, March 4, 2026)
- [DOL proposes overhaul of worker classification rules](#) (Phillips Lytle, March 3, 2026)
- [DOL proposes new rule on independent contractor classification: What employers need to know](#) (Reed Smith, March 3, 2026)
- [Back to the future: U.S. Department of Labor proposes revised worker classification rule](#) (A&O Shearman, March 3, 2026)

- [DOL proposes new rule on worker classification: Key changes and implications for employers](#) (Skadden, March 2, 2026)
- [DOL proposes new rule regarding independent contractor classification](#) (Taft, February 27, 2026)
- [DOL issues independent contractor regs, NLRB restores joint employment regs](#) (Constangy, February 27, 2026)
- [DOL proposes to readopt the 2021 independent contractor rule with minor variations](#) (Seyfarth, February 27, 2026)
- [DOL signals employer-friendly shift in contractor classification](#) (Sheppard, February 27, 2026)
- [What's old is new again: DOL proposes to revert to the 2021 independent contractor framework](#) (Squire Patton Boggs, February 26, 2026)
- [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)

Section 4

News and viewpoints

- [DOL proposes to replace the 2024 independent contractor rule](#) (subscription required) (Bloomberg Law, March 9, 2026)
- [Labor agency's gig worker flip-flopping weakens rules in court](#) (subscription required) (Bloomberg Law, March 2, 2026)
- [Trump administration moves to nix Biden-era limits on independent contractors](#) (US News, February 26, 2026)
- [DOL moves to loosen independent contractor regulations](#) (HR Dive, February 26, 2026)
- [DOL proposes overhaul of independent contractor rule](#) (World at Work, February 26, 2026)
- [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, January 27, 2025)
- [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, February 29, 2024)
- [Businesses win second chance at gig worker rule challenge](#) (Bloomberg Law, February 20, 2024)

- [Collateral damage in the war on 'gig work'](#) (Yahoo News, February 7, 2024)
- [Understanding driver earnings & expenses](#) (Lyft news, February 6, 2024)
- [Lyft lets drivers keep 70% of earnings amid DOL rule shift](#) (Bloomberg Law, February 6, 2024)
- [Lyft becomes first rideshare company to implement minimum pay for drivers](#) (Entrepreneur, February 6, 2024)
- [Lyft says drivers will receive at least 70% of rider payments](#) (Yahoo Finance, February 6, 2024)
- [Workers poised to get benefits as rule creates 'employees'](#) (Bloomberg, January 29, 2024)
- [Labor department's new independent contractor rule could help workers recover lost wages — here's how](#) (CNBC, January 23, 2024)
- [New worker classification rule could disrupt the US gig economy](#) (Investopedia, January 20, 2024)
- ['Economic realities' test adds promise to DOL gig worker rule](#) (Bloomberg Law, January 18, 2024)
- [Businesses seek speedy legal fight over new DOL gig worker rule](#) (Bloomberg Law, January 18, 2024)
- [DOL's rule narrows scope of independent contractor classification](#) (SHRM, January 10, 2024)
- [Can US independent contractor rule survive legal challenges, Congress?](#) (Reuters, January 10, 2024)
- [Worker status rule garners trucking, builder ire more than Uber](#) (Bloomberg Law, January 10, 2024)
- [How the new Biden administration gig-worker rule could impact California](#) (San Francisco Chronicle, January 9, 2024)
- [Millions of gig workers could qualify as employees under new Biden-era rule](#) (subscription required) (The Washington Post, January 9, 2024)
- [Biden administration revamps gig worker rule](#) (Axios, January 9, 2024)
- [U.S. Chamber opposes harmful new DOL regulation on employee and independent contractor classification](#) (US Chamber of Commerce, January 9, 2024)
- [Lyft's view on 2024 Department of Labor rule](#) (Lyft, January 9, 2024)

- [Our statement on the US Department of Labor's worker classification rule](#) (Uber, January 9, 2024)
- [New rule tightens worker classification standards; Uber, Lyft say their drivers won't be affected](#) (US News, January 8, 2024)

2) *Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.*

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