

## DOL Issues Proposed Rule Addressing Independent Contractor Status

---

November 22, 2022

On October 13, 2022, the Department of Labor (DOL) issued a notice of proposed rulemaking (Notice) that seeks to clarify the analysis for determining whether a worker is an employee or independent contractor. According to the DOL, the proposed rule is intended to be more consistent with legal precedent interpreting the Fair Labor Standards Act (FLSA).

The Notice proposes to replace the January 7, 2021, Independent Contractor Status Under the FLSA rule with a rule that seeks to reduce the risk that employees are misclassified as independent contractors, while attempting to provide added certainty for businesses that engage with individuals who are in business for themselves. The DOL states the new rule would preserve essential worker rights and provide consistency for regulated entities. The full text of the Notice as published in the Federal Register can be found [here](#).

According to the DOL, the proposed rule would do the following:

- Rescind the 2021 Independent Contractor Rule.
- Revert to the longstanding interpretation of the economic reality factors, thereby aligning the department's approach with courts' FLSA interpretation and the economic reality test.
- Ensure that all economic realities test factors are analyzed without assigning a predetermined weight to a particular factor or set of factors.
- Restore the multifactor, totality-of-the-circumstances analysis to determine whether a worker is an employee or an independent contractor under the FLSA.
- Assist with the proper classification of employees and independent contractors under the FLSA.

The comment period for this Notice closes at 11:59 p.m. ET on December 13, 2022. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment, including any personal information provided, will become a matter of public record, and will be posted without change to [www.regulations.gov](http://www.regulations.gov).

Please contact your Miller Canfield attorneys if you would like to learn more about how this Notice may impact your organization.