

DOL Withdraws Trump-Era Independent Contractor Rule

May 7, 2021

*Updated: On May 5, 2021, the Department of Labor (DOL) announced a **final rule** withdrawing a proposed Trump-era independent contractor rule that would have made it easier to classify workers as independent contractors under the Fair Labor Standards Act. The rule never went into effect due to the DOL's **delay** of its effective date. The DOL decided to finalize the withdrawal of the rule after further review and consideration of public comments submitted in response to the notice of proposed rulemaking. The withdrawal is effective immediately.*

On January 6, 2021, the U.S. Department of Labor finalized its **rule** concerning the classification of workers as employees or independent contractors under the Fair Labor Standards Act (FLSA), which is scheduled to be published on January 7, 2021. This rule will be effective 60 days after the publication, on March 8, 2021.

The finalized rule does the following:

- Reaffirms that independent contractors are not employees under the FLSA and are not entitled to minimum wage or overtime pay under the Act.
- Specifies that economic dependence is the ultimate inquiry in determining worker status. In other words, an individual is an employee under the FLSA "if, as a matter of economic reality, the individual is economically dependent on that employer for work." On the other hand, an individual is an independent contractor "if the individual is, as a matter of economic reality, in business for him- or herself."
- Identifies non-exhaustive and non-dispositive facts in determining whether a worker is economically dependent on the potential employer:
 - Two "core factors" that typically will carry the most weight:
 - Three other factors to be considered, though they carry less weight than the core factors:
- Advises that in evaluating the individual's economic dependence on the potential employer, the actual practice of the involved parties is more relevant than what may be contractually or theoretically possible.
- Provides fact-specific examples demonstrating how the factors to determine economic dependence may be analyzed.

If you have questions about this new Department of Labor rule, please contact your Miller Canfield attorney or any of the authors of this alert