



United States Department of Labor Proposes New Rule on Differentiating Independent Contractors From Employees

Publication:

Labor & Employment Client ALERT re United States Department of Labor Proposes New Rule on Differentiating Independent Contractors From Employees

On September 22, 2020, the Department of Labor proposed a new rule offering guidance and clarity to employers trying to determine whether a worker is an independent contractor or an employee. If adopted, this rule would help bring certainty to an area of perennial confusion for employers and workers alike. See [Proposed Rule](#).

The rule as proposed would adopt the economic reality test to determine whether a worker is an employee or independent contractor for the purposes of the Fair Labor Standards Act. The test considers whether a worker maintains their own independent business or depends on the employer for work. The new rule places the most weight on the nature and degree of the individual's control over their work as well as their opportunity for profit or loss. Additional factors that may help the analysis include the skill required to perform the work, the degree of permanence in the working relationship, and whether the work is part of an integrated unit of production.

The proposed rule makes clear that it is the reality of the worker/business relationship that determines the worker's status, not contractual agreements or theoretical possibilities.

The proposed rule is open for public comment for thirty days. While the federal law will be clearer if the proposed regulations become law, employers will also have to be mindful of states whose laws more broadly define "employee."

Riker Danzig is here to help if you need assistance of any kind. Please do not hesitate to contact [Scott Ohnegian](#), [Adam McInerney](#), [Fiona Cousland](#), or any member of Riker Danzig's [Labor & Employment Group](#) regarding any

specific legal issue affecting your business.

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