

NEWS BRIEF

Provided by: ToughComp

DOL Announces Plan to Issue Proposed Independent Contractor Rule

In a recent blog post, the U.S. Department of Labor (DOL) [announced](#) it will issue a proposed rule on determining employee or independent contractor status under the Fair Labor and Standards Act (FLSA).

On Jan. 7, 2021, during the Trump administration, the DOL published a rule—the Independent Contractor Status Under the Fair Labor Standards Act—that expanded the definition of workers who could be classified as independent contractors. On March 4, 2021, under the Biden administration, the DOL delayed the rule before withdrawing it on May 6, 2021, for being inconsistent with the FLSA’s text and purpose.

On March 14, 2022, a U.S. district court vacated the DOL’s delay and withdrawal of the rule for failing to meet rulemaking requirements for federal agencies. As a result, the district court determined the rule took effect as of March 8, 2021—the original effective date—and remains in effect.

Employer Takeaway

The DOL’s proposed rule could provide clarity for employers in establishing and maintaining proper classification of workers under the FLSA, impacting compliance costs and litigation risk.

The existing rule is generally viewed as employer-friendly, making it easier for employers to classify workers as independent contractors under the FLSA. The DOL’s proposed rule may change how employers classify their workers.

If the DOL adopts a more employee-friendly rule, workers previously classified as independent contractors may be entitled to employee protections and essential benefits such as the right to minimum wage, overtime pay, unemployment insurance and workers’ compensation. Providing these protections to more workers could be expensive for employers.

What’s Next?

The DOL plans to engage in rulemaking on determining employee and independent contractor status under the FLSA. The DOL will hold public forums in June to hear from those who may be impacted by the new rule. An employer forum will take place on June 24, 2022, and a worker forum on June 29, 2022. Once the DOL publishes a proposed rule in the Federal Register, there will be a notice and comment period.

Even after the DOL completes the notice and comment period, it will likely be some time before this proposed rule becomes final, if ever. Employers are not obligated to change how they classify employees until the DOL’s proposed rule becomes final. However, potentially impacted employers will want to follow the DOL’s rulemaking process closely.

We will keep you apprised of any notable updates. For more resources on FLSA regulations, contact ToughComp today.