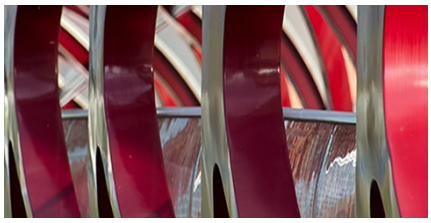
masuda funai



News & Types: Client Advisories

DOL Proposes Return to Prior Independent Contractor Framework

3/9/2026

By: Naureen Amjad, James Jansen

Practices: Employment, Labor & Benefits

On February 26, 2026, the U.S. Department of Labor (DOL) issued a proposed rule that could again change how businesses determine whether workers are classified as employees or independent contractors under the Fair Labor Standards Act (FLSA). The proposed rule would rescind the operative Biden-era federal rule issued in 2024, which applies a six-factor "totality of the circumstances" economic realities test that gives equal weight to multiple factors when evaluating whether a worker is economically dependent on a business. In its place, the DOL proposes largely returning to the rule adopted in 2021 during the first Trump Administration, which places the greatest emphasis on two key factors: (i) the nature and degree of the worker's control over the work, and (ii) the worker's opportunity for profit or loss. The first factor weighs in favor of an independent contractor relationship when the individual controls such aspects of the work as setting work schedules and choosing assignments, works with little or no supervision, and is able to work for others. The second factor supports an independent contractor determination "to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work." Unlike the current rule which applies only to the FLSA, the DOL's proposed rule seeks to apply the same independent contractor analysis to the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) for the sake of uniformity. The proposed rule has been published in the *Federal Register* and shall be subject to a 60-day comment period through April 28, 2026, during which time the public, including employers, workers and industry groups, may submit comments.

Employers should pay close attention to these changes because worker classification directly affects legal and financial obligations under federal and state law. When a worker is properly classified as an independent contractor, the worker is generally responsible for paying their own taxes and obtaining their own benefits and insurance, and the company does not withhold payroll taxes, provide overtime pay, offer any traditional health or retirement benefits, or provide unemployment insurance or workers' compensation coverage. Liability can arise when a worker labeled as an independent contractor is later determined to have been misclassified and should have actually been an employee under the law. In those circumstances, liability may flow from the employer failing to treat workers the same way as other employees, potentially creating exposure for unpaid wages, unpaid overtime, payroll taxes, penalties, and employee benefit contributions. In addition to liability under the FLSA, misclassification claims may also create additional exposure under state wage and hour laws,

which often apply stricter standards than federal law. The DOL's proposed rule represents the latest shift in federal policy regarding worker classification, which established a lower threshold for businesses to classify workers as independent contractors.

Given the proposed change, businesses should understand that the federal standard for evaluating independent contractor relationships may shift again, but that does not necessarily mean classification decisions will become easier *per se* or less risky. Many states, Illinois, New York, and Washington, apply worker-classification standards that are stricter than the federal test. In addition, several jurisdictions, including California, Massachusetts, and New Jersey, apply the "ABC test" that generally makes it more difficult for businesses to classify workers as independent contractors. As a result, even if a worker could qualify as an independent contractor under the proposed federal rule, that same worker may still be treated as an employee under state wage-and-hour laws. For employers operating in jurisdictions that have narrower standards, like Illinois and California, this federal change may have little practical impact on day-to-day classification decisions.

Businesses should also note that worker classification is determined by the actual working relationship, not simply by the label of "independent contractor" in an agreement. Courts typically examine factors such as the level of supervision, control over scheduling, integration into the business's operations and whether the worker operates an independent business. Businesses that rely on independent contractors, particularly those with multi-state operations or in industries that commonly use contractors, may wish to review their classification practices, independent contractor agreements and operational structures to ensure they align with both federal and applicable state standards and reflect a legitimate independent business arrangement.

If you have any questions about this legal update or need any assistance with classification decisions, please contact Naureen Amjad (namjad@masudafunai.com), James Jansen (jjansen@masudafunai.com), or any other member of Masuda Funai's Employment, Labor and Benefits Group.

Follow us on LinkedIn for additional Legal Updates.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.