

# Motor Carriers Beware: Department of Labor Revises Classification of Independent Contractors Under Fair Labor Standards Act

Article

*Amundsen Davis Transportation Alert*

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On January 10, 2024 the U.S. Department of Labor (DOL) published a final rule (29 CFR 795) revising the DOL's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). The determination of who qualifies as an independent contractor within FLSA will be based on a six-factor economic reality test, with "economic dependence" being the "ultimate inquiry for determining whether a worker is an independent contractor or an employee. The six-factor economic reality test is considered in totality with no one factor being determinative. The six-factors are (1) a workers' opportunity for profit or loss depending on managerial skills; (2) investments by the worker and the potential employer into the business; (3) degree of performance of the working relationship between the potential employer and worker; (4) the nature and degree of control the potential employer has over the worker; (5) extent to which the work performed by the independent contractor is an integral part of the potential employer's business; and (6) does the worker use specialized skills in their role. These factors will be analyzed to determine whether a worker is truly an independent contractor or employee. This rule went into effect on March 11, 2024.

The purpose of the rule is to prevent the misclassification of employees as independent contractors that may deny workers minimum wage, overtime pay, workers' compensation and other protections, and to hold potential employers accountable for tax and insurance purposes.

This rule will have many implications on the transportation industry, as owner-operators who have historically been classified as independent contractors under FLSA may now be classified as employees. It remains to be seen whether the Final Rule will impact litigation, as most courts already utilize some type of "economic reality test" based on established precedent.

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Motor carriers will face new compliance hurdles and will need to reevaluate their existing independent contractor relationships to determine if these workers are properly classified under the new “totality of the circumstances” approach imposed by the new rule. Motor carriers that are unsure how the members of their fleet will be classified should seek legal counsel to avoid running afoul of FLSA which could open them up to investigations and lawsuits.

To learn more about independent contractors under the Fair Labor Standards Act, check out a recording of our recent webcast.

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