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DOL PROPOSES NEW INDEPENDENT CONTRACTOR RULE, REVERSING BIDEN ADMINISTRATION'S 2024 RULE

On Feb. 26, 2026, the Department of Labor (DOL) published a proposed rule seeking to clarify the distinction between employee and independent contractor status under the Fair Labor Standards Act (FLSA). The new rule is yet another shift in approach from the DOL regarding how to analyze independent contractor classification. As a result, employers may need to again consider auditing their independent contractor classifications.

The proposed rule rescinds the more detailed 2024 final rule in favor of a more streamlined approach, looking at the "economic totality" of the worker, as was endorsed by the first Trump administration. The proposed rule includes the following framework:

- Uses an "economic reality" test to determine whether a worker is in business for themselves as an independent contractor or is an employee economically dependent on an employer for work. Generally, this factor remains the foundation of the independent contractor analysis and is not a significant departure from the 2024 final rule.
- The DOL encourages considering factors such as the amount of skill required for the work, degree of permanence of the working relationship, and whether the work is part of an integrated unit of production.
- One area of departure from the 2024 final rule is reinstatement of the concept of "core factors," which are intended to carry heightened weight in the analysis. The "core factors" analysis can more readily lead to a finding of independent contractor status and considers whether a worker is truly in business for themselves by considering:
    - The nature and degree of control over the work.
    - The worker's opportunity for profit or loss based on initiative and/or investment.
- Another big-picture change in the proposed rule is the focus on the actual practices of the working relationship. The proposed rule dictates

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that what actually happens in the working relationship is more relevant to an analysis of independent contractor versus employee status, as opposed to the 2024 final rule, which places more weight on what level of employer control may be theoretically possible under the circumstances.

The DOL has opened a notice and comment period through April 28, 2026, allowing the public to provide feedback on the proposed rule, as required by law.

Armstrong Teasdale will continue to monitor this important development in labor and employment law, as independent contractor classifications remain an area of real exposure to employers, particularly given the ever-changing regulations and guidance from the DOL. If you have questions, please reach out to your regular Armstrong Teasdale contact or one of the firm's Employment and Labor attorneys.