



Labor Relations Bulletin

FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

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Independent Contractor Rule Changes

On January 9, 2024, the U.S. Department of Labor has published its [final rule](#) for determining when a worker is an employee or an independent contractor for purposes of federal wage and hour law. The final rule was published in the Federal Register on Wednesday January 10, 2024, and is effective March 11, 2024. A series of FAQs the Department of Labor released on the final rule can be found [here](#). NECA has long opposed the prior Administration's independent contractor rule and advocated for its rescission. NECA submitted [joint comments](#) with the IBEW in support on the Administration's proposed rule.

Shifting from “Two Categories” to “Totality of Circumstances”

The final rule provides revised guidance, rescinding the 2021 independent contractor rule, and restores the six factor analysis, the “economic reality test”, used by courts in the past to determine workers classifications. The Final Rule aims to ensure that all these factors are examined under a “totality-of-the circumstances approach,” without assigning a predetermined or greater weight to a particular factor or set of factors. The test uses a combination of circumstances, such as:

- (1) opportunity for profit or loss depending on managerial skill;
- (2) investments by the worker and the potential employer;
- (3) degree of permanence of the work relationship;
- (4) nature and degree of control;
- (5) extent to which the work performed is an integral part of the potential employer's business; and
- (6) skill and initiative.

Businesses can expect increased scrutiny on their worker classification practices. They should review their independent contractor relationships carefully, with competent legal counsel, and carefully consider the factors listed above to ensure compliance. The DOL has published a FAQ page that can be used as a resource and can be found [here](#).

Looking Ahead

Employer misclassification of workers as independent contractors is a longstanding, pervasive problem affecting millions of workers and costing government agencies billions of dollars each year. Misclassification is most common in industries where it is most profitable, such as construction, where workers' compensation insurance premiums are substantial due to the inherent safety risks of working in the industry. The misclassification of construction workers is a significant problem that unfortunately often goes unchecked and without consequences, allowing unscrupulous employers to win construction contracts at the expense of taxpayers, responsible employers, and workers.

NECA strongly supports the change to the ruling and considers this a win for member contractors. The Final Rule will address the rampant misclassification across industries, particularly the construction sector. The Final Rule will create a more level playing field and encourage responsible economic growth, averting the cascading effects of unsafe workplaces while making it more difficult for irresponsible employers to flout long established, well-meaning employment laws.

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