



EMPLOYER LAW BLOG

EMPLOYER ALERT: Department of Labor Announces New Independent Contractor Rule

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On October 11, 2022, the United States Department of Labor (DOL) issued new proposed independent contractor regulations designed to replace a rule recently issued during the Trump administration. We previously discussed the background on that rule in another blog article, so check back there for more details on the legal back-and-forth over the issues.

As we noted before, this new proposed rule was expected. There will be a 45-day comment period for the public and interested parties to weigh in on the new proposed independent contractor regulations. We anticipate substantial comments (and criticisms) will be raised to this new proposed set of regulations. We also anticipate there will be legal challenges to them.

The net effect of the new proposed regulations—if finalized—will be to broaden who might qualify as an “employer” for purposes of compliance with the requirements of the Fair Labor Standards Act (FLSA). The Trump-era rule had simplified the analysis of this question, but this new set of rules will reinstate a complex, multi-factor “economic realities” test that arguably makes the issue more difficult to understand and apply as a practical matter.

So, employers should pay close attention to this new proposed set of rules, especially those who have or work with independent contractors as part of their business. Stay tuned for further developments.