

CLIENT ALERT

The U.S. Department of Labor's Independent Contractor Rule Postponed as the New Administration Reconsiders

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On Tuesday, March 2, 2021, the U.S. Department of Labor (DOL) postponed the effective date for a new regulation establishing a five-factor test for determining independent contractor classification. The rule, promulgated by the Trump Administration and previously scheduled to go into effect on March 8, and titled “Independent Contractor Status under the Fair Labor Standards Act” (Rule), is now slated to go into effect on May 7. The DOL announced that it will take this additional time to consider the legal, policy, and enforcement implications of the Rule, potentially calling into question whether the Rule will take effect at all, or if it does, how it might be modified.

The test used in determining whether workers are independent contractors or employees has significant ramifications for the applicability of wage and hour laws such as the Fair Labor Standards Act enforced by the DOL. At a high level, the test is designed to evaluate the economic realities of the working relationship to determine whether workers are economically dependent on a business, and so are more like employees, or are in business for themselves, and so are more like independent contractors. Most importantly, the test examines the control that workers have over their own work and the opportunity for profit or loss as a result of personal investment. The amount of skill required for the position, the permanence of the working relationship, and how integrated a worker’s role is to the organization’s overall operation are also factors that can assist with the analysis.

Between now and May 7, businesses should continue to assess the impact the Rule, as phrased, would have on the classification of their workers. This assessment involves not only the agreements in place with those engaged on an independent contractor basis, but also the realities on the ground. Given the signaling from the Biden administration, however, businesses would do well to be equally prepared for the Rule’s demise.

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