

Navigating the DOL's Final Rule on Independent Contractor Status

Strategies for Compliance and Effective Workforce Management

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Today's **Speaker**



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With over 20 years of experience inside trucking, logistics, and warehousing businesses, Doug has served as General Counsel with Dart Transit Company, is CEO of The Grawe Group, a law firm aimed at helping transportation companies achieve their goals, and most recently serving as General Counsel at Openforce.

Understanding **worker misclassification**

Worker misclassification occurs when a person is incorrectly categorized as an independent contractor (IC) instead of an employee or vice versa.

Implications for Independent Contractors

- ✓ **Tax Responsibilities**
- ✓ **Benefits**
- ✓ **Legal Protections**

Implications for Employees

- ✓ **Tax Withholding**
- ✓ **Benefits**
- ✓ **Legal Protections**

DOL misclassification impacts

companies in all industries, of all sizes

Holland Services

Oil & Gas

\$43.2 million

U.S. Medical Staffing

Healthcare Staffing

\$10 million

Arizona Parts Authority

Auto Parts Distributor

\$5.6 million

Force Corp.

Construction

\$2.4 million

Romeo's Food Products

Food Delivery

\$650K

Servant's Quest

Home Healthcare

\$358K

DOL's largest misclassification case in history in the works

Arise Virtual Solutions, Inc. – Customer Service Provider

- 22,000 workers
- \$100M+ in potential penalties

Understanding the DOL's final rule is the first step to protecting your business

- Effective March 11, 2024
- Defines independent contractor status under the Fair Labor Standards Act (FLSA)
- Adopts the Economic Realities test, not the ABC test (good news)
- Throws out the Trump-era version focusing on two factors
- Reintroduces a 6-factor version of the Economic Realities test



Understanding **The Rule**

This new rule does not rewrite independent contractor rules across the country and will only apply to claims overseen by the DOL.

Impacted

- ✔ **Minimum wage claims**
- ✔ **Overtime claims**
- ✔ **Claims of other FLSA protections**

Not Impacted

- ✔ **Workers' compensation claims**
- ✔ **Unemployment claims**
- ✔ **Motor vehicle accident claims**
- ✔ **IRS issues or many state claims**



Unofficial 7th Factor

Anything else the agency believes shows the contractor was an employee or independent contractor.



Protecting **Your Business**

Contractor rights are not enough – **proof is a must in courts today**

≠ IC Status

- Right to work with others
- Right to use a legal entity
- Right to hire and fire
- Required to have insurance
- Responsible for business expenses

= IC Status

- Proof of multiple customers
- Proof of legal entity use
- Proof of hiring & firing
- Proof of business insurance
- Proof of business expenses

8 critical compliance questions

If I had a claim today....

- How many contractor contracts are signed?
- How many contracts are in the name of the entity you are paying?
- Can you point to a document giving you the right to make each settlement deduction you have made?
- Can you prove the contract, dispatch records, pay, 1099s all align with the right names, EINs, insurances, etc?
- How will you prove contractors chose to hire and fire?
- How will you prove contractors advertised their business?
- How will you prove contractors worked with other businesses?
- How will you prove contractors had insurance and paid for it?

Can you prove it?

The best way to win a misclassification claim is to **prevent one from happening**

Tips to preventing misclassification claims

- Refresh contractor agreements regularly
- Educate your workforce on how to respect independent contractors' business freedoms
- Utilize available technologies like Openforce to help prove your independent contractor workers are truly independent



Questions?

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