# Navigating the DOL's Final Rule on Independent Contractor Status

Strategies for Compliance and Effective Workforce Management







## Today's Speaker



#### Doug Grawe Openforce General Counsel

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



# 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

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







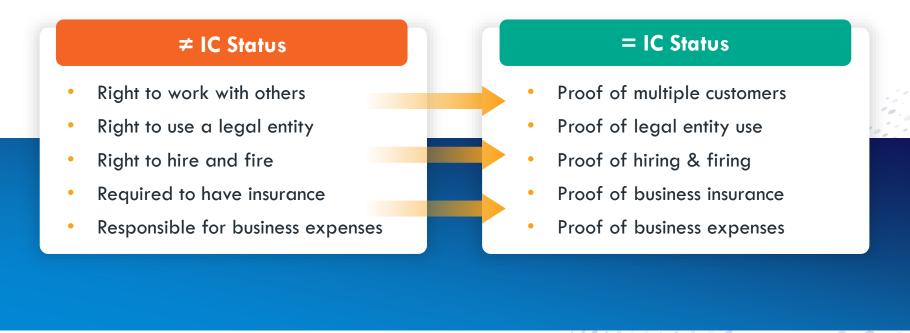
## **Unofficial** 7<sup>th</sup> Factor

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





## 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, ElNs, 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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