

LEGAL UPDATE



HIGHLIGHTS

- On **Jan. 10, 2024**, the DOL published a final rule revising the agency's guidance on how to analyze who is an employee or independent contractor under the FLSA.
- On **March 11, 2024**, the final rule became effective.
- On **May 1, 2025**, the DOL issued FAB 2025-1 on how to determine employee or independent contractor status when enforcing the FLSA.

DOL Issues Guidance on Independent Contractor Misclassification Enforcement

On **May 1, 2025**, the U.S. Department of Labor (DOL) issued [Field Assistance Bulletin \(FAB\) 2025-1](#) on how to determine employee or independent contractor status when enforcing the Fair Labor Standards Act (FLSA).

Background

On Jan. 10, 2024, the DOL published a [final rule](#) revising the agency's guidance on analyzing who is an employee or independent contractor under the FLSA. This rule rescinded the [2021 Independent Contractor Rule](#). Several lawsuits are pending in federal courts challenging the 2024 final rule. In those lawsuits, the DOL has taken the position that it is reconsidering the final rule, including whether to rescind it. Additionally, the DOL's Wage and Hour Division (WHD) is currently developing a standard for determining employee versus independent contractor status under the FLSA.

Enforcement Guidance

While the DOL reviews the 2024 final rule, the WHD will no longer apply the rule's analysis when determining employee versus independent contractor status in FLSA investigations. Instead, the WHD will rely on principles outlined in [Fact Sheet #13](#) and the reinstated [Opinion Letter FLSA2019-6](#), which addresses classification in the context of virtual marketplace platforms. According to the DOL, this approach will provide greater clarity for businesses and workers navigating modern arrangements while legal and regulatory questions are resolved.

Employer Takeaway

The DOL's guidance does not change existing regulations but reflects how the department is allocating enforcement resources during the review of the 2024 final rule. The FAB supersedes any prior or conflicting guidance provided to the WHD staff on enforcement related to independent contractor misclassification. Until further action is taken, the 2024 final rule remains in effect for purposes of private litigation, and the FAB does not change the rights of employees or the responsibilities of employers under the FLSA. Employers should continue to monitor the situation for updates.