

HR BRIEF

April 2026

DOL Announces Proposed Independent Contractor Rule



The U.S. Department of Labor (DOL) [announced](#) a proposed rule that would rescind the department's 2024 final independent contractor rule and replace it with an analysis for employee classification under the Fair Labor Standards Act (FLSA) similar to the one adopted by the DOL in 2021.

The proposed rule would:

- Apply an economic reality test to determine whether a worker is in business for themselves as an independent contractor or an employee economically dependent on an employer.
- Identify and explain two core factors to help determine if a worker is economically dependent on an employer for work or in business for themselves:
 - The nature and degree of control over the work
 - The worker's opportunity for profit or loss based on initiative and/or investment
- Identify other factors to help determine a worker's status as an employee or independent contractor, including:
 - The amount of skill required for the work
 - The degree of permanence of the working relationship
 - Whether the work is part of an integrated unit of production
- Advise that the actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.
- Provide eight fact-specific examples applying the factors to real-life circumstances.

The proposed rule was [published](#) in the Federal Register on Feb. 27, and the DOL's public comment period ends on April 28.

Employers should monitor updates on the proposed rule, including the publication of a final rule and any related legal challenges. If the final rule takes effect, employers may consider modifying existing practices and policies to comply with the new standard for employee classification under the FLSA.

How an Extra Biweekly Payroll Period in 2026 Impacts Payroll

Employers use one of a few standard payroll cycles. While some follow a monthly or weekly period, most have a semi-monthly (twice per month) or biweekly (every other week) schedule. In fact, biweekly is one of the most common payroll cycles, with nearly half (43%) of employers following it.

For employers that run biweekly payroll, 2026 introduces a unique scheduling challenge. Because Friday, Jan. 1, 2027, is a federal holiday, many employers that use a Friday pay date will need to shift that payday earlier in the week—placing it in 2026. As a result, under most payroll structures, Thursday, Dec. 31, is likely to become the final payday of 2026.

The cadence of 27 payroll dates occurs slightly less than once per decade due to mismatches between days (365 days per year and 14-day pay cycles) and the extra day in leap years.

Impact on Payroll

A year with a potential extra pay period can create several payroll challenges, particularly for employers with salaried employees who must be paid a predetermined amount each pay period. Due to this distinction, most employers are either planning a pro-rated adjustment (dividing the annual salary by 27 rather than 26) or continuing pay cycles as usual, adding an extra pay date on Dec. 31 and paying employees an extra 3.85% in 2026.

Generally, even employers planning for 27 payroll cycles complete benefits deductions for the first 26 paychecks.

This additional cycle can introduce compliance issues and operational complexities impacting:

- FLSA compliance
- Salaried employee requirements
- Notice requirements
- Tax withholdings
- Payroll budgets and accuracy
- Benefits contributions

Employer Takeaway

In 2026, an extra biweekly payroll period presents operational and compliance challenges for employers. Employers are responsible for complying with all applicable laws and regulations and should consult local legal counsel for guidance. Contact us today for more resources.