



2024 Legislative Update



Dallas Chapter
American Payroll Association

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Objectives



Impact of recent state and federal legislation on employers



What the proposed DOL rules mean for employers



Recent Case Law

Six Factor Independent Contractor Rule

- “Totality of the circumstances” test; in general, the rule defines the economic reality factors as follows:
- Opportunity for profit or loss depending on managerial skill: This factor considers facts such as: whether the worker can determine or meaningfully negotiate the payment for their work; whether the worker can accept or decline jobs, or otherwise determine the order in which jobs are performed; whether the worker advertises for their services; and whether the worker can decide to hire others or purchase resources. Workers with no opportunity for a profit or loss will tend to be employees rather than independent contractors.
- Investments by the worker and the employer: Under this factor, workers who make capital or entrepreneurial investments indicates independent contractor status. These include investments that increase a worker’s ability to do more work, reduce business costs or extend a business’s market reach. Costs incurred by workers such as to acquire tools, labor or other costs imposed by the employer are not considered capital or entrepreneurial investments.
- Degree of permanence of the work relationship: Under this factor, independent contractors will typically have working relationships that are definite in duration, nonexclusive, project-based or sporadic, as opposed to employees whose working relationships are typically open-ended. However, seasonal or temporary work does not necessarily indicate independent contractor status.

Six Factor Independent Contractor Rule

- Nature and degree of control: This factor considers whether the potential employer sets the worker's schedule, supervises the work (including through technology or a device), or explicitly limits the worker's ability to work for others. For example, a company that asks a worker to sign a non-compete may inadvertently create an employer-employee relationship with an individual intended to be an independent contractor.
- Extent to which the work performed is an integral part of the employer's business: This factor considers whether the function that a worker performs is critical, necessary or central to the potential employer's principal business; *could a company function without the service performed by the workers?* The more important the work is, the most likely the individual is an employee and not an independent contractor.
- Skill and initiative: Under this factor, workers will likely be considered employees if they do not use specialized skills to perform their work or they are dependent on training from the potential employer to perform their work. Additionally, workers with specialized skills will not automatically indicate independent contractor status. Instead, workers who use their specialized skills in connection with a business-like initiative will likely be considered independent contractors.

All factors should be considered equally

FAQs:

<https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking/faqs>

Misclassification

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- Remember IRS and NLRB have *different* definitions of “employees” than FLSA.
 - Texas PayDay Act, Chapter 61, Texas Labor Code definitions
 - The DOL itself has stated that this rule is designed to provide more protection to workers. Industries such as construction, trucking, and health care have been specifically identified as those that may be significantly impacted by the new rule.
 - Effective March 11, 2024

White Collar Regulations *Proposed*

- The DOL seeks to increase the standard salary level for exempt white-collar executive, administrative, and professional employees from \$684 to \$1,059 per week (\$55,068/year).
- The DOL seeks to increase the total annual compensation requirements for the “highly compensated employee” exemption from \$107,432 to \$143,988 per year.
- Finally, the DOL seeks the implementation of a mechanism that would automatically update these earnings thresholds every three years.
- the DOL is not proposing any changes to the duties tests, which outline the types of work an employee must perform in order to be classified as exempt.
- *Anticipated date of final rule: April 2024*

Death Star Bill

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- Texas Regulatory Consistency Act – prevents cities from passing and enforcing local ordinances in broad policy areas, including labor, where state law already exists. Stated purpose is to eliminate inconsistent business regulations. Declared unconstitutional by Harris County judge, but AG appealed so it went into effect. Allows private suits against cities.
 - Austin – water breaks, sick leave ordinances, fair chance acts
 - Houston – housing
 - Fort Worth – Human Relations ordinances – employment, public accommodations, housing

Title VII

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- *Hamilton v. Dallas County* – what is “adverse action”?
 - *Muldrow v. City of St. Louis*
 - *Hudson v. Lincare* – Prompt remedial action
 - *Allen v. United States Postal Service* – retaliation

Title VII/ADA

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- *Arredondo v. Elwood Staffing Servs., Inc* – Title VII application to staffing firm
 - *Harrison v. Brookhaven* – Adverse action post-Hamilton
 - *EEOC v. Methodist Hospitals of Dallas* – “Most qualified applicant” and ADA
 - *Price v. Valvoline* – valid reason for termination regardless of evidence of discrimination

FLSA

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- ***Cunningham v. Circle 8 Crane Services, LLC*** – Mechanic exemption
 - ***Loy v. Rehab Synergies, LLC*** – Off-the-clock case
 - ***Flores v. FS Blinds, LLC*** – Independent contractors
 - ***Klick v. Cenikor Foundation*** – Rehab patients performed work the facility was paid for

Questions?



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Thank you!