On November 19, 2026, the U.S. Department of Labor announced a final rule, “Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act,” which will become effective 60 days after publication in the Federal Register. This fact sheet corresponds to that rule. The final rule rescinds the “Employee or Independent Contractor Classification Under the Fair Labor Standards Act” rule, 89 FR 1638, that was published on January 10, 2024.





WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet 13: Employee or Independent Contractor Status Under the Fair Labor Standards Act (FLSA)

Revised November 2026

This fact sheet provides general information concerning employee or independent contractor status under the FLSA.

Is a Worker an Employee or an Independent Contractor?

The Department has issued regulations addressing how to analyze whether a worker is an employee or an independent contractor under the FLSA (see 29 CFR part 795, effective 60 days after publication in the Federal Register). Employees receive the protections of the FLSA. Independent contractors are in business for themselves and therefore are not covered by the FLSA. The analysis in these regulations also applies to the Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

For a worker to be protected by the minimum wage and overtime pay requirements of the FLSA, the worker must be an “employee” of the employer, meaning that there is an employment relationship between the worker and employer. Independent contractors do not have these protections. Whether a worker is an employee or an independent contractor under the FLSA is determined by looking at the “economic realities” of the worker’s relationship with the employer rather than “technical concepts” or common law standards. If the economic realities show that the worker is economically dependent on the employer for work, then the worker is an employee. If the economic realities show that the worker is in business for him- or herself, then the worker is an independent contractor.

Though both employees and independent contractors are dependent on others in some sense, economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business. Economic dependence does not focus on the amount of income that the worker earns, or whether the worker has other sources of income.

What Is the Economic Reality Test?

The economic reality test analyzes multiple factors to determine whether an employment relationship exists under the FLSA (29 CFR 795.105). The goal of the test is to decide if the worker is economically dependent on the potential employer for work or is instead in business for him- or herself. No single factor determines a worker’s status. The test examines five factors; two are “core,” or primary, factors, and there are three “other factors”:

Core Factors:

1. The nature and degree of control over the work; and
2. The worker’s opportunity for profit or loss based on exercise of initiative or management of investment, or both.

Other Factors:

1. The amount of skill required for the work;
2. The degree of permanence of the working relationship between the worker and the potential employer; and
3. Whether the work is part of an integrated unit of production.

The two core or primary factors typically carry more weight in the analysis when evaluating whether a worker is an economically dependent employee. When the two core factors point toward the same classification, there is a substantial likelihood that this is the worker's correct classification, whether employee or independent contractor. The three other factors typically carry less weight in the analysis and, in some cases, may not carry any weight at all. Accordingly, the three other factors, either individually or combined, are highly unlikely to outweigh the combined weight of the two core factors when those two factors point toward the same classification.

Economic Reality Test Factors

The nature and degree of control over the work. This factor weighs in favor of independent contractor status where the worker exercises substantial control over key aspects of the work, such as scheduling, selection of projects, or ability to work for others. This factor weighs in favor of employee status where the potential employer exercises substantial control over the work, such as controlling the schedule or workload, or by directly or indirectly requiring the worker to work exclusively for the potential employer.

Requiring the worker to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) is not control that makes the worker more or less likely to be an employee. Whether a particular requirement falls into this category depends on how it works in practice, not how it is labeled. For example, detailed instructions governing how, when, or where the worker must perform the work may indicate control typical of an employment relationship even if described as promoting health or safety or maintaining quality control standards.

The worker's opportunity for profit or loss based on exercise of initiative or management of investment, or both. This factor weighs toward independent contractor status to the extent the worker has an opportunity to earn profits or suffer losses based on his or her initiative or management of his or her investment in equipment or capital expenses, for example, helpers or material to further his or her work, or both. This factor weighs toward employee status to the extent the worker is unable to affect his or her earnings or is only able to do so by working more hours or faster.

Both use of initiative and management of investment are considered under this factor, but both are not required to indicate independent contractor status. However, evidence under one consideration could be outweighed by more persuasive evidence under the other consideration pointing in a different direction.

The amount of skill required for the work. This factor weighs in favor of independent contractor status to the extent the work at issue requires specialized training or skill that the potential employer does not provide. This factor weighs in favor of employee status to the extent the work at issue requires no specialized training or skill or the worker is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.

The degree of permanence of the working relationship between the worker and the potential employer. This factor weighs in favor of independent contractor status to the extent the work relationship has a fixed ending date or is sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor status. This factor weighs in favor of employee status to the extent the work relationship is instead by design indefinite in duration (with no fixed ending date) or continuous.

Whether the work is part of an integrated unit of production. This factor weighs in favor of independent contractor status to the extent the work is separate from the potential employer's production process. This factor weighs in favor of employee status to the extent the work is a part of the potential employer's integrated production process for a good or service. This factor is different from the concept of the importance or centrality of the work to the potential employer's business.

Additional factors.

Additional factors not listed above may be considered if they assist in assessing whether the worker is in business for him- or herself or is economically dependent on the employer for work.

There are certain factors that do not help in determining whether a worker is an employee or independent contractor. These include the absence of a formal employment agreement, whether the worker is licensed by State/local government, whether the potential employer contributes to portable benefits for the worker, and where the work is performed (unless the location is relevant under the control or integrated unit factors). Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

Requirements

When an employer-employee relationship exists and the employee is performing work that is covered under the FLSA, the employee must be paid not less than the federal minimum wage ($7.25 per hour) and overtime pay that is not less than one and one-half the regular rate of pay for all hours worked over 40 per week unless a relevant exemption applies. The FLSA also has recordkeeping requirements, retaliation protections, and child labor provisions which regulate the employment of minors under the age of eighteen.

For further guidance, please see Examples of Analyzing the Economic Reality Factors.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8:00 a.m. to 4:30 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.