

Final Rule: Independent Contractor Status under the Fair Labor Standards Act

29 CFR Parts 780, 788, and 795

On January 6, 2021, the Department of Labor (Department) announced a final rule clarifying the standard for employee versus independent contractor under the Fair Labor Standards Act (FLSA). The effective date of the final rule is March 8, 2021.

In the final rule, the Department:

- Reaffirms an “economic reality” test to determine whether an individual is in business for him or herself (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two “core factors” that are most probative to the question of whether a worker is economically dependent on someone else’s business or is in business for him or herself:
 - The nature and degree of control over the work.
 - The worker’s opportunity for profit or loss based on initiative and/or investment.
- Identifies three other factors that may serve as additional guideposts in the analysis, particularly when the two core factors do not point to the same classification. The factors are:
 - The amount of skill required for the work.
 - The degree of permanence of the working relationship between the worker and the potential employer.
 - Whether the work is part of an integrated unit of production.
- The actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.



- Provides six fact-specific examples applying the factors.

The final rule will be published in the Federal Register on January 7, 2021.

Additional Information

- [Independent Contractor Status under the Fair Labor Standards Act](#)
- [News Release 1/6/2021: U.S. Department of Labor Announces Final Rule to Clarify Independent Contractor Status Under the Fair Labor Standards Act](#)
- [Fox Business \[Opinion 01/06/2021\]: Labor Secretary Scalia: Independent contractor or employee? Final federal rule brings clarity to gig economy.](#)