

Untangling Worker Classification: Contractor or Employee?



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Learning Objectives

- Identify the criteria that distinguish independent contractors from employees based on the Department of Labor's economic realities test and FLSA regulations.
- Analyze steps to take if a worker has been misclassified, including corrective actions and potential legal implications.
- Advise clients on best practices for reviewing worker classifications and maintaining ongoing compliance with federal labor laws to avoid misclassification risks.



Why Worker Classification is Important

- Financial Impact
- Compliance with Federal and State
- Worker Protections
- Business Benefits of Contractor Relationships
- Increased DOL Scrutiny
- Costly Penalties



Increased DOL Scrutiny and Pushback

- Dec. 2022 - Renewed memorandum of understanding between DOL and IRS to enhance joint efforts to combat misclassification of workers
- Jan. 2021 – Sept. 2024 - Over \$1 billion on back wages and damages recovered for over 615,000 workers
- The Committee on Education and the Workforce is challenging the March 2024 ruling



SECTION 1: The 2024 DOL Ruling and Its Impact



Key Changes in the 2024 DOL Rule

- Recinds the 2021 Rule
- The Six-Factor Economic Realities Test
- Removal of Core Factor Focus



Six-Factor Economic Realities Test

- Factor 1: Opportunity for Profit or Loss
- Factor 2: Worker and employer investments
- Factor 3: Permanency of relationship
- Factor 4: Degree of control
- Factor 5: Integration into business
- Factor 6: Skill and initiative



Clarification in Control and Compliance

- Control under compliance
 - Does the employer dictate
- Compliance-friendly control
- Documentation strategy



SECTION 2: Case Studies on Misclassification Under the 2024 Rule



Case Study 1: Arise Virtual Solutions, Inc

- Background: Service provider for major brands.
- DOL Findings: Misclassified 22,000+ workers as contractors.
- Outcome: Legal actions for back wages and damages.
- Key Lessons: The importance of assessing worker integration and economic dependence.



Case Study 2: Travelon Transportation

- Background: Non-emergency transportation provider.
- DOL Findings: Drivers misclassified, resulting in unpaid overtime.
- Outcome: \$254,628 awarded for back pay.Key
- Lessons: Permanent roles with set schedules often signal employee status.



Case Study 2: C&G HVAC LLC

- Background: Dallas-based HVAC provider.
- DOL Findings: Misclassification of 430 technicians.
- Outcome: \$1.5 million in unpaid wages and damages.
- Key Lessons: Economic dependence is a key factor, especially for single-source income.



Case Study 4: Village Concrete Inc.

- Background: Virginia concrete contractor.
- DOL Findings: Misclassified 29 workers; record-keeping issues.
- Outcome: \$1.2 million in back pay and penalties.
- Key Lessons: Importance of documenting control factors and work conditions.



SECTION 3: Compliance Steps and Advisory Best Practices



Steps for Reassessment and Compliance

- Conduct Classification Audits: Reassess using the six-factor test.
- Update Documentation: Emphasize the role, control, and dependency.
- Corrective Actions: Implement immediate changes if misclassification is identified.
- Consult Legal Guidance: For complex cases or ambiguous roles.



Best Practices for Advising Clients

- Regular Reviews: Schedule annual or semiannual classification audits.
- Role Clarity: Define tasks and control boundaries in contracts.
- Documentation Tips: Detailed records of job scope, control factors, and business integration.
- Resources: Link to 2024 DOL guidelines and classification checklists.

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