



## INDEPENDENT CONTRACTOR POLICY UPDATE

02/27/26

### U.S. Department of Labor Proposes New Independent Contractor Rule

The [U.S. Department of Labor \(DOL\)](#) has proposed a new rule establishing its interpretation of the test for determining whether a worker is an independent contractor or employee under the federal [Fair Labor Standards Act](#).

The proposed test would also be used to determine worker status under the [Family and Medical Leave Act](#) and the [Migrant and Seasonal Agricultural Worker Protection Act](#). The proposed rule is set to be published in the [Federal Register](#) today.



The [proposed rule](#) would repeal and replace a 2024 regulation finalized by the Biden DOL and:

- Apply an “economic reality” test to determine whether a worker is in business for himself or herself as an independent contractor or is an employee economically dependent on an employer for work.
- Identify and explain two “core factors” to help determine if a worker is economically dependent on an employer for work or 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.
- 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, degree of permanence of the working relationship, and 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.

There will be a 60-day period for the public to submit comments on the proposed rule. DOL will then consider the comments before finalizing the regulation.

For a look at the proposed rule, [click here](#), and if you have any questions, please contact **Nick Chiappe** at [nchiappe@caltrux.org](mailto:nchiappe@caltrux.org).