

DOLs Independent Contractor Rule on Life Support

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The U.S. Department of Labor looks like it may scrap a final rule that would have given clarity to the long-standing uncertainty of which workers qualify as independent contractors.

The DOL had just passed the final rule in January, during President Trump's waning days in office, establishing a decidedly employer-friendly, five-factor test when designating a worker as an independent contractor and not subject to the regulations of the Fair Labor Standards Act. It was to become effective March 8.

But the Biden administration, which quickly reversed several employer-friendly executive orders signed by former President Donald J. Trump and paused the DOL proposed and final rules set to take effect, delayed the effective date for the independent contractor test almost as soon as he entered office.

The DOL has since pivoted and delayed the effective date for the independent contractor status rule to at least early May so that the new administration could examine it further. On Friday, the department said it was withdrawing a previous opinion letter that supports the five-factor test for who is an independent contractor, signaling a likely rejection of the final rule.

However, the rule may not be thrown out completely. The department could alter it in accordance with the new administration's vision - though that seems unlikely now.

If you have any questions about who is and who isn't an independent contractor at your business, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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Jill Sebest Welch

Partner

Tel: (717) 399-1521

Email: jwelch@barley.com