

RIP, Independent Contractor Rule

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News broke in the winter that the independent contractor rule that former president Donald Trump proposed [looked to be dead](#), and the inevitability of that became true this week. The economic realities independent contractor rule was withdrawn and we likely will not see a new rule anytime soon.

"The department believes that the rule is inconsistent with the FLSA's (Fair Labor Standards Act's) text and purpose and would have a confusing and disruptive effect on workers and businesses alike due to its departure from longstanding judicial precedent," according to the U.S. Department of Labor's announcement on May 5.

Under the FLSA, employees are entitled to minimum wage, overtime pay and other benefits, but independent contractors are not entitled to such benefits.

Although the department doesn't plan to issue a new rule any time soon, President Joe Biden has said he supports an "ABC" test which assumes employee status unless the three ABC factors are all met:

A: The worker is free from the control and direction of the hiring entity in connection with the work's performance, both under the contract for the performance of the work and in fact.

B: The worker performs work that is outside the usual course of the hiring entity's business.

C: The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

The "B" is the issue. If you are in the same line of business as a client, you are considered an employee. That's frequently the case for gig economy contractors such as Uber and DoorDash drivers who the department contends would no longer be independent drivers but employees.

Under Biden's preferred ABC test, more workers will be classified as employees rather than independent contractors, causing rising costs for employers.

If you have any questions about independent contractors and how they are currently classified, please contact me or any member of the [Barley Snyder Employment Practice Group](#).

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