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Client Alert: U.S. Department of Labor Proposes New Rule on Employee vs. Independent Contractor Classification

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On February 26, 2026, the U.S. Department of Labor's (DOL) Wage and Hour Division published a **proposed rule** designed to clarify when a worker is properly classified as an employee versus an independent contractor under the Fair Labor Standards Act and related federal laws. The proposed rule would rescind the DOL's 2024 final rule addressing independent contractor classification—a Biden-era regulation—and replace it with an analysis similar to the framework the DOL previously adopted in 2021.

The proposed rule would adopt an "economic reality" test to determine whether a worker is either an employee who is economically dependent on an employer for work or an independent contractor who is in business for themselves. As opposed to the 2024 rule, this return to the 2021 framework identifies two core factors that anchor the analysis:

- The nature and degree of control an employer exercises over the work performed.
- The worker's opportunity for profit or loss based on their own entrepreneurial initiative and/or investment.

In addition to these core factors, the proposed rule identifies several supplemental considerations, including the amount of skill required for the work, the degree of permanence of the working relationship, and whether the work is part of an integrated unit of production. Importantly, the proposed rule also advises that the actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.

The proposed rule is subject to a 60-day public comment period that closes on April 28, 2026. Accordingly, employers that rely on independent contractors should closely monitor this rulemaking, as the proposed rule's emphasis on economic reality over contractual labels means that a reevaluation by businesses of whether their current independent contractor arrangements reflect genuine entrepreneurial independence in practice—not merely on paper—will be needed. Because the proposed rule would also extend to the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act, as indicated in the DOL's proposal, the implications of worker classification extend well beyond wage and hour obligations.

We encourage clients to review the full text of the proposed rule, assess their workforce arrangements, and consider submitting comments before the April 28, 2026 deadline. Please do not hesitate to reach out to Ryan Guerin or a member of Shumaker's Labor and Employment team with any questions about how this proposal may affect your business.