

Bodman PLC

April 15, 2026

### **DOL Rewinds Independent Contractor Guidance... Again**

#### ***What Employers Should Know About the Department of Labor's 2026 Proposed Rule***

By: Cameron D. Ritsema, Member, Workplace Law Group

This is the second edition of Bodman's *Wage & Hour Wire* following our inaugural installment, [Performance-Based Bonus Plans: A Regular Rate Misconception Dispelled](#), which addressed a frequently misunderstood wage and hour compliance issue facing employers. In this edition, we turn to another high-risk area of wage and hour enforcement: worker misclassification.

On February 26, 2026, the U.S. DOL's Wage and Hour Division issued a Notice of Proposed Rulemaking that would again revise how workers are classified as employees or independent contractors under federal law. While the proposal does not immediately change existing obligations, it represents a pivot in federal enforcement direction and a familiar swing in the regulatory pendulum.

#### **A Return to a Familiar "Economic Reality" Test**

If finalized, the proposed rule would rescind the Biden Administration's 2024 independent contractor rule and replace it with a framework largely modeled on the Trump Administration's 2021 rule, which itself drew heavily from longstanding federal court precedent.

The analysis asks a simple question: is the worker economically dependent on the business for work, akin to an employee, or is the worker truly in business for themselves, akin to an independent contractor? The proposed rule provides that, "economic dependence in this context means the dependence that a typical employee has on an employer for work ... Economic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income."

Five distinct factors inform the "economic dependence" inquiry under the proposed rule. None is dispositive, although two are considered "core."

## Two Core Factors Take Center Stage

Under the proposed rule, two core factors are given greater weight than all others:

1. The nature and degree of the worker's control over the work; and
2. The worker's opportunity for profit or loss based on initiative or investment.

If both factors point in the same direction, classification will typically be clear.

## Other Relevant Factors

If the core factors point in different directions, the DOL would permit consideration of:

3. The amount of skill required for the work;
4. The degree of permanence of the working relationship; and
5. Whether the work is part of an integrated unit of production.

## Expanded Scope Beyond the FLSA

The proposed rule would apply not only to the Fair Labor Standards Act (FLSA), but also to the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

## Timing and Next Steps

Comments on the proposed rule are due April 28, 2026. After review, the DOL may issue a final rule later this year.

## Practical Implications for Employers

- Worker misclassification remains a high priority enforcement issue. Even under a more structured framework, classification decisions remain fact intensive.
- A worker classified as an independent contractor should now be consistently applied and analyzed under all three (3) statutes (FLSA, FMLA, and MSPA).
- Employers should consider:
  - Reevaluating and reviewing current independent contractor relationships.
  - Aligning operational practices with intended classification.
  - Assessing exposure beyond wage and hour laws.
  - Submitting comments during the rulemaking process.

Bodman's Workplace Law Group is available to assist with compliance planning, audits, and comment submissions. Please contact the author, [Cameron D. Ritsema](#), or any member of [Bodman's Workplace Law Group](#) if you have questions regarding any of the

information above. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

<b>BODMAN'S WORKPLACE LAW GROUP</b>			
<b>JOHN DAVID GARDINER</b> <i>Chair</i> 616-205-3123 <a href="mailto:jgardiner@bodmanlaw.com">jgardiner@bodmanlaw.com</a>	<b>REBECCA C. SEGUIN-SKRABUCHA</b> <i>Vice Chair</i> 248-925-1936 <a href="mailto:rsequin-skrabuca@bodmanlaw.com">rsequin-skrabuca@bodmanlaw.com</a>	<b>JOHN T. BELOW</b> 248-743-6035 <a href="mailto:jbelow@bodmanlaw.com">jbelow@bodmanlaw.com</a>	<b>KERRY K. CAHILL</b> 248-743-6046 <a href="mailto:kcahill@bodmanlaw.com">kcahill@bodmanlaw.com</a>
<b>JOHN C. CASHEN</b> <i>Of Counsel</i> 248-743-6077 <a href="mailto:jcashen@bodmanlaw.com">jcashen@bodmanlaw.com</a>	<b>MACKENZIE E. CLARK</b> 248-925-1926 <a href="mailto:mclark@bodmanlaw.com">mclark@bodmanlaw.com</a>	<b>AMANDA MCSWEEN EMPEY</b> 313-392-1056 <a href="mailto:aempey@bodmanlaw.com">aempey@bodmanlaw.com</a>	<b>GARY S. FEALK</b> 248-743-6060 <a href="mailto:gfealk@bodmanlaw.com">gfealk@bodmanlaw.com</a>
<b>AARON D. GRAVES</b> 313-392-1075 <a href="mailto:agraves@bodmanlaw.com">agraves@bodmanlaw.com</a>	<b>MICHELLE L. KOLKMEYER</b> 248-743-6031 <a href="mailto:mkolkmeier@bodmanlaw.com">mkolkmeier@bodmanlaw.com</a>	<b>CHRISTINA L. NECHIPORCHIK</b> 734-930-2495 <a href="mailto:cnechiporchik@bodmanlaw.com">cnechiporchik@bodmanlaw.com</a>	<b>KAREN L. PIPER</b> <i>Of Counsel</i> 248-743-6025 <a href="mailto:kpiper@bodmanlaw.com">kpiper@bodmanlaw.com</a>
<b>CAMERON D. RITSEMA</b> 616-205-4358 <a href="mailto:critsema@bodmanlaw.com">critsema@bodmanlaw.com</a>	<b>DAVID B. WALTERS</b> 248-743-6052 <a href="mailto:dwalters@bodmanlaw.com">dwalters@bodmanlaw.com</a>		