

Use of AI Tools to Manage Independent Contractors Carries Risk of Reclassification of Contractors as Employees

By: John T. Below, Member, Workplace Law Group and Artificial Intelligence Team

As companies continue to adopt Artificial Intelligence (AI) tools to streamline various business processes, many of these tools are being applied to workforce management tasks. While the power of these tools is undeniable, concerns are emerging that the level of control they allow companies to have over independent contractors (ICs) could lead a court or government agency to determine that the contractors are actually employees, entitling them to minimum wages, overtime, and potentially other benefits. **It is therefore critical for employers (and purported employers) to review closely, among other requirements, the level of control, via AI or otherwise, that they exert over workers they classify as ICs.**

For decades, employment law has focused on, among other factors, a purported employer's level of control over a worker in assessing whether a worker is correctly classified as an independent contractor (IC) or an employee. While control has not been, and is not now, the only determinative factor in classifying an IC or an employee, it is arguably the most important factor. Worker or management control is also fairly easy to understand and demonstrate from an evidentiary standpoint. Typically, for ICs, the purported employer either took a hands-off approach or only monitored outcomes; whereas, for employees, it set schedules, monitored progress, and exercised multiple other elements of control.

As recently featured in a *Law360* article by Irene Spezzamonte dated June 3, 2026, many employers are using AI tools to manage and control their workforce - both employees and ICs. An emerging concern however is that AI tools used by employers to come up with employee assignments, allocation of tasks, job progress, performance reviews, or worker audits, could support a finding that an independent contractor is an "employee" under federal law, giving rise to minimum wage and overtime requirements. [The United States Department of Labor's \("DOL"\) new proposed rule](#) regarding proper classification of independent contractors puts particular emphasis on the employer's control over its workers.

AI system capability to assign worker tasks, create schedules and evaluate worker progress and performance could support a determination by the DOL (or a court) that the nature and degree of control the employer is exercising via AI tools demonstrates the worker is not an IC but an employee who is entitled to overtime. The proposed rule, titled "Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act," would rescind a rule former President Joe Biden rolled out. The Biden rule laid out a comprehensive six-prong economic realities test to determine whether workers are independent contractors. The new DOL proposal would bring back the five-prong economic reality test included in a rule President Donald Trump introduced in his first administration.

While purported employers may try to point out that its AI tools, not its managers, are managing the ICs, the implementation of such tools will very likely be viewed as the employer's sole responsibility. Notably, the new rule contains no AI-related guidance and until it does, purported employers must consider and balance between the gains an employer could make in efficiency through AI and threatening a worker's independent contractor status. In sum, employers and purported employers **MUST** review closely, among other requirements, the level of control via AI or otherwise they exert over workers they classify as ICs.

Bodman can help employers review their use of AI tools in workforce management and assess the risks they may present. Please contact the author, John T. Below (jbelow@bodmanlaw.com | 248-743-6035), or any member of Bodman's [Workplace Law Group](#) or [Artificial Intelligence Team](#) 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.

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