

## **The Rule Has Not Yet Become Effective and Its Rescission Has Been Proposed But Is Not Final Yet**

On March 11, 2021, the U.S. Department of Labor (DOL) [announced](#) a [proposal](#) to rescind the Independent Contractor [final rule](#). The rule was originally published in January, but its effective date has been [delayed](#) as the result of a freeze the Biden administration ordered on regulatory changes adopted late into the previous administration.

### **Independent Contractor Final Rule**

The independent contractor final rule would require employers to use an economic reality test to gauge financial dependency in an employment relationship to determine whether workers should be classified as employees or independent contractors.

### **Rescinding the Rule**

After its review, the DOL stated that implementing this rule would “significantly weaken” worker protections under the Fair Labor Standards Act (FLSA).

The DOL found that using the economic reality test would narrow or minimize the importance of factors not used by the economic reality test. The DOL and the courts have traditionally favored other factors to establish the true nature of the employment relationship between workers and their employers.

### **Impact on Employers**

At this stage, rescission of the rule has only been proposed and is not final. The public will be allowed to comment on this proposal until April 12, 2021.

Employers should continue to monitor the DOL website for updates on this and other labor and employment developments.