

**BLOGS**

Department of Labor

President Biden Freezes DOL Final Rule on Independent Contractor Classification

In his first few days in office, President Biden has set out to reverse a number of Trump-era labor policies. One such reversal involves the DOL final rule on independent contractor classification (the “Final Rule”), which was published on January 7, 2021, and would have set new standards for determining when a worker is an employee or an independent contractor under the Fair Labor Standards Act. Notably, the Final Rule implemented a more employer-friendly “economic realities” test, which focused on (1) the nature and degree of the worker’s control over the work, and (2) the worker’s opportunity for profit or loss as the primary factors guiding the analysis of whether a worker should be classified as an employee or independent contractor. The Final Rule was set to take effect on March 8, 2021.

On January 20, 2021, just hours after his inauguration, President Biden sent a memorandum to all agency heads directing them to freeze all regulatory activity pending review by the new administration. This action effectively killed the Final Rule before it could take effect. Notably, President Biden has stated that he aims to work with Congress to pass a federal independent contractor law that mirrors the “ABC” test some states use, including California through AB-5. Therefore, it is likely that the next regulation or piece of legislation we see on this issue will contain more worker-friendly language, moving away from the “economic realities” test. Given the potential effect of AB-5 on franchising in California, franchisors should closely monitor this development at the federal level.

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