



## **Wage and Hour Update - Top Trending Wage & Hour Issues**

Abel Martinez

H-E-B, Group Vice-President of Partner Relations, Risk Solutions, & Government Affairs

1

**Top 3 Trending  
Issues**

2

# Department of Labor Change Is in the Air

3



## The U.S. Department of Labor

- Independent Contractor Rule
- Overtime Rule

4

## Independent Contractor Test

- DOL Notice of Proposed Rulemaking – 10/13/2022 – DOL seeking to revise the “independent contractor” standard.
- Proposed rule largely mirrors the rule prior to the Trump Administration’s Jan. 2021 final rule, which reduced the factors considered and raised the standard for misclassification.
- Proposed rule considers 6 equally weighted factors that, with some “slight variation,” both the DOL and the federal courts historically have applied.
- These factors are:
  - Degree of control exercised by the employer over the worker;
  - Worker’s skill or initiative;
  - Permanency of the relationship between the parties;
  - Worker’s opportunity for profit or loss dependent on managerial skill;
  - Worker’s investment in equipment or other resources as compared to the employer’s investment; and
  - Whether the work is an integral part of the employer’s business.

5

## Overtime Changes: Exempt Salaried Test

- Currently, to be considered exempt, most white-collar exemptions require an employee must make a salary of \$35,568 a year.
- DOL plans rule making on a proposed new rule – likely Summer 2023.
- Expectations are that the new rule will likely be *above* \$47,476 per year (the Obama Test that was struck down), with some advocating over \$80,000.
- Expect a vigorous rule making process with voluminous comments.
- Count on court challenges to whatever rule is put into place.
- Highly compensated (i.e. \$200,000), doesn’t mean you are exempt.

– *Helix Energy Solutions Group, Inc., et al. v. Hewitt*, 143 S.Ct. 677 (2023)

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Wage and Hour Update

Also available as part of the eCourse

[2023 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the 30<sup>th</sup> Annual Labor and Employment Law Conference session "Wage and Hour Update"