



Wage and Hour Update - Top Trending Wage & Hour Issues

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Top 3 Trending Issues

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Department of Labor Change Is in the Air

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The U.S. Department of Labor

- Independent Contractor Rule
- Overtime Rule

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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.

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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)

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