U.S Department of Labor
Wage and Hour Division

May 1, 2025

Field Assistance Bulletin No. 2025-1

MEMORANDUM FOR: Regional Administrators
District Directors

FROM: Donald M. Harrison, III
Acting Administrator

SUBJECT: FLSA Independent Contractor Misclassification Enforcement Guidance

This Field Assistance Bulletin provides guidance to WHD field staff regarding the analysis to apply when determining employee or independent contractor status for purposes of enforcing the FLSA.

Background

A number of lawsuits are pending in federal courts challenging the legality of the rule entitled Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638, ("2024 Rule"), which outlined the framework for determining employee or independent contractor status under the FLSA. The Department has taken the position in those lawsuits that it is reconsidering the 2024 Rule, including whether to rescind the regulation. Specifically, WHD is currently reviewing and developing the appropriate standard for determining FLSA employee versus independent contractor status.

Enforcement Guidance

Consistent with the Department's position on the 2024 Rule expressed in the above-referenced litigation, WHD will no longer apply the 2024 Rule's analysis when determining employee versus independent contractor status in FLSA investigations. WHD will enforce the FLSA in accordance with Fact Sheet #13 (July 2008)*, and as further informed by Opinion Letter FLSA2019-6 with respect to any matters for which no payment has been made, directly to individuals or to DOL, for back wages and/or civil money penalties as of May 1, 2025.

The Department reserves its right to exercise its enforcement authority in specific matters explicitly deemed appropriate by the Administrator, or designee, as an appropriate allocation of resources.

The guidance in this FAB supersedes any contrary or conflicting guidance to field staff addressing this topic.

Until further action is taken, the 2024 Rule remains in effect for purposes of private litigation and nothing in this FAB changes the rights of employees or responsibilities of employers under the FLSA, see Fact Sheet #13 (March 2024).

***Fact Sheet #13 (July 2008)**

Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the meaning of "employment relationship" and the significance of that determination in applying provisions of the FLSA.

Characteristics

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act. In the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:

1) The extent to which the services rendered are an integral part of the principal's business.

2) The permanency of the relationship.

3) The amount of the alleged contractor's investment in facilities and equipment.

4) The nature and degree of control by the principal.

5) The alleged contractor's opportunities for profit and loss.

6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.

7) The degree of independent business organization and operation.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

Requirements

When it has been determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the Act, it is required that the employee be paid at least the Federal minimum wage of $5.85 per hour effective July 24, 2007; $6.55 per hour effective July 24, 2008; and $7.25 per hour effective July 24, 2009, and in most cases overtime at time and one-half his/her regular rate of pay for all hours worked in excess of 40 per week. The Act also has youth employment provisions which regulate the employment of minors under the age of eighteen, as well as record-keeping requirements.

Typical Problems

(1) One of the most common problems is in the construction industry where contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the tests for independence, as stated above. (2) Franchise arrangements can pose problems in this area as well. Depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor. (3) A situation involving a person volunteering his or her services for another may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type of service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization. (4) Trainees or students may also be employees, depending on the circumstances of their activities for the employer. (5) People who perform work at their own home are often improperly considered as independent contractors. The Act covers such homeworkers as employees, and they are entitled to all benefits of the law.