



May 14, 2025

The Honorable Lori Chavez-DeRemer  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

The Honorable Keith Sonderling  
Deputy Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

The Honorable Donald Harrison  
Acting Administrator  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Secretary Chavez-DeRemer, Deputy Secretary Sonderling, and Acting Administrator Harrison:

The Independent Work Coalition (IWC)<sup>1</sup> and the 27 undersigned organizations write to request that the Wage and Hour Division (WHD) rescind the final rule “Employee or Independent Contractor Classification Under the Fair Labor Standards Act”<sup>2</sup> (hereinafter referred to as the “2024 rule”). The 2024 rule is currently in effect and faces litigation in several federal court cases. We appreciate that the Department has acknowledged in recent court filings that it intends to reconsider the 2024 rule, including whether to issue a notice of proposed rulemaking rescinding the regulation. We also appreciate the Department’s recent guidance that it will not rely on the 2024 regulation while it considers whether to rescind it.

For the reasons outlined below, IWC urges WHD to act swiftly to rescind the 2024 final rule.

**Employee or Independent Contractor Classification Under the Fair Labor Standards Act (RIN 1235-AA43)**

The 2024 rule expands the scope of the “economic realities test” used to determine whether a worker is an employee or independent contractor under the Fair Labor Standards Act (FLSA), narrowing opportunities for independent work. The regulation adopts a test where any of six different factors – and an open-ended seventh factor – could be determinative of employee status, injecting significant subjectivity into worker classification determinations.

The 2024 rule replaced and is a significant departure from a regulation<sup>3</sup> that DOL adopted in 2021 under the first Trump administration. The test adopted in the 2021 rule emphasized

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<sup>1</sup> The IWC is comprised of a diverse group of associations, businesses, and other stakeholders that support independent work and the millions of Americans who work as independent contractors. The coalition is dedicated to advocating for policies that strengthen independent work opportunities and empower individuals who choose to be in business for themselves. Likewise, IWC is committed to educating policymakers about the important role independent contractors play across every sector of the economy.

<sup>2</sup> [RIN 1235-AA43](#)

<sup>3</sup> [RIN 1235-AA34](#)



“entrepreneurial opportunity” in the analysis and used two core factors to guide classification determinations under the FLSA. The 2021 rule, which was carefully developed to provide certainty for stakeholders and encourage innovation and entrepreneurship, provided a workable classification test that was practical, predictable, and easy to apply to the realities of the modern economy.

The 2024 rule, on the other hand, gives all factors equal weight and has overlap in the analysis of the factors – providing little clarity for the regulated community. In doing so, it invites frivolous litigation and creates confusion for workers and businesses, which ultimately has a chilling effect on opportunities for independent work. Further, the Biden rule is in direct conflict with the preferences of the independent contractors themselves, who routinely report they want to remain independent contractors due to the freedom and flexibility that comes with such status, including determining their own hours, what work they choose to do, and how they perform that work.<sup>4</sup>

#### ***Executive Order 14219, Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative***

Moreover, the Department has recently reviewed all regulations under its purview as required by Executive Order 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*.<sup>5</sup> The Executive Order directed agencies to review all regulations within their jurisdictions and identify those that fall into seven categories that “undermine national interest.” The categories are as follows:

- Are unconstitutional or raise constitutional difficulties such as exceeding scope of the power vested in the Federal Government by the constitution;
- Are based on unlawful delegations of legislative power, are based on anything other than the best reading of the underlying statutory authority or provision;
- Implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
- Impose significant costs upon private parties that are not outweighed by public benefits;
- Harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
- Impose undue burdens on small business and impede private enterprise and entrepreneurship.

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<sup>4</sup> See, e.g., MBO Partners, State of Independent in America, 2023 (“In 2023, 77% of independent workers reported being very satisfied with independent work, and 78% plan to continue working independently.”); Upwork, [Freelance Forward Economist Report](#), 2021 (“As freelance work continues to grow, 78% of those participating in this work say that schedule flexibility is a key reason for continuing this work, and 68% also cite ‘career ownership’ as a top draw”); Flex, Morning Consult, [Attitudes of App-Based Workers](#), September 2022 (finding 77% of app-based workers support maintaining their classification as independent contractors); American Transportation Research Institute, “[Owner-Operators / Independent Contractors in the Supply Chain](#),” December 2021 (noting that 73% of independent truck drivers expected they would experience a significant decrease in job satisfaction if they were reclassified to a company driver).

<sup>5</sup> 90 FR 10583



The 2024 rule falls under multiple of the seven categories outlined in the Executive Order as undermining the national interest and harms small businesses, entrepreneurs, and independent contractors. It creates unnecessary uncertainty, generates additional regulatory and administrative burdens, and chills innovation across the economy while stifling independent work opportunities.

### **Conclusion**

Rescinding the 2024 rule would align with the Trump administration's deregulatory agenda and support the entrepreneurs and small businesses that rely on the independent contractor model and choose to be in business for themselves. Therefore, IWC urges WHD to act swiftly to withdraw this harmful regulation.

Sincerely,

American Association of Advertising Agencies (4As)  
American Pipeline Contractors Association  
American Trucking Associations  
Association of Bi-State Motor Carriers  
Associated General Contractors of America  
Construction Industry Round Table  
Financial Services Institute  
Flex Association  
Global Cold Chain Alliance  
HR Policy Association  
Independent Bakers Association  
International Franchise Association  
International Warehouse Logistics Association (IWLA)  
National Association of Convenience Stores  
National Association of Professional Insurance Agents  
National Association of Wholesaler-Distributors  
National Council of Chain Restaurants  
National Retail Federation  
National Utility Contractors Association  
NATSO, Representing America's Travel Centers and Truck Stops  
New York New Jersey Foreign Freight Forwarders and Brokers Association Inc.  
Power & Communication Contractors Association  
SIGMA: America's Leading Fuel Marketers  
Small Business & Entrepreneurship Council  
The National Association of Mutual Insurance Companies  
The Transportation Alliance  
U.S. Chamber of Commerce