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Independent contractors value the freedom of flexible work

Opportunity Solutions Project (OSP) is a nonprofit organization that advocates for federal and state policy solutions to advance the power of work so that more people may achieve the American Dream. OSP opposes the department's proposal to abandon the test ("Independent Contractor Rule") to determine whether an individual is an employee or independent contractor and adopt a new test under the Fair Labor Standards Act (FLSA).

There is a reason why occupational groups lobbied for exemptions to California's unclear, unpredictable, and inflexible worker-status law.¹ When it comes to regulation, ambiguity does not favor the public. You have to know the law in order to follow it.

The Independent Contractor Rule elevates two core factors to determine whether an individual is in business for themselves or economically dependent on someone else's business.² In the application of the "economic realities" test, the Independent Contractor Rule focuses on the degree of control over work and the opportunity for profit or loss from one's own initiative or investment. In contrast, the proposed rule would implement a "totality of the circumstances" approach, unweighting the factors and expanding consideration to any relevant facts.³

The proposed rule lacks clarity and would result in an unpredictable application of the worker-status test. Complicated labor laws mean less economic opportunity. If implemented, the proposal would make it more difficult for entrepreneurs and independent workers to find companies willing to take on the risk of becoming their client. The department's proposal would create regulatory uncertainty and prolong worker-status litigation.

The Independent Contractor Rule has simplified regulatory compliance.⁴ Federal circuits have applied different iterations of the "economic realities" test to determine worker status under the FLSA. The Independent Contractor Rule is a distillation of court decisions that have applied the "economic realities" test. It clarifies existing standards long held by the courts and the department, providing certainty for entrepreneurs and companies by elevating two core factors.

As demonstrated in California, complicating worker-status determinations makes it more difficult for businesses to work with independent contractors.⁵ In turn, fewer individuals are able to find flexible work and achieve economic independence.

But the consequences of the proposed rule would be more than economical. The majority of independent contractors prefer their work arrangements.⁶ This fact is unsurprising, as traditional work arrangements do not allow for the same flexible work/life balance as independent contracting. For many independent contractors, the point is independence. Independent workers often cite the

freedom to set their own schedules and meet familial obligations as the reason they chose flexible work.⁷ Some independent contractors are entrepreneurs, while others need flexible work arrangements because life circumstances require it, such as rural workers, individuals with disabilities, and working parents.⁸

American families have individual needs and preferences. America's independent workforce is growing, and independent work will continue to play an increasingly important role in the national economy.⁹ As more Americans move toward independent work, it is critical the department provide predictability. Accordingly, OSP opposes the department's proposal because it would diminish opportunities for flexible work.

References

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