



December 13, 2022

Amy DeBisschop
Director, Division of Regulations,
Legislation, and Interpretation
U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue NW
Washington, DC 20210

Re: Notice of Proposed Rulemaking (NPRM) – Independent Contractor Classification under the Fair Labor Standards Act, Docket No. 2022-003, RIN 3142-AA43

Dear Ms. DeBisschop:

The National Demolition Association (NDA) represents nearly 500 U.S. and Canadian companies that offer standard demolition services as well as a full range of demolition-related services and products. NDA educates members on the latest advances in equipment and services, provides educational programs and tools to stay abreast of regulatory and safety matters and keeps regulators informed about issues in our industry. NDA also increases public awareness of the economic and societal benefits of demolition.

The U.S. Department of Labor (DOL) is proposing to modify Wage and Hour Division regulations to revise its analysis for determining employee or independent contractor classification under the Fair Labor Standards Act (FLSA). Specifically, the DOL is proposing to rescind the 2021 Independent Contractor (IC) Rule and return to a “totality-of-the-circumstances analysis” of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity.¹

The DOL is further proposing to return the consideration of investment to a standalone factor, provide additional analysis of the control factor (including detailed discussions of how scheduling, supervision, price-setting, and the ability to work for others should be considered), and return to the longstanding interpretation of the integral factor, which considers whether the work is integral to the employer's business.²

While NDA believes more clarity is needed as it pertains to the classification of independent contractors under the FLSA, the demolition industry opposes the DOL’s proposed rule and believes it is a step in the wrong direction for both employers and workers. The DOL’s decision to rescind the simplified two-factor economic reality test from the 2021 IC final rule in favor of a more complex and wide-ranging “totality-of-the-circumstances analysis” will only increase uncertainty for employers and lead to costly litigation and administrative costs for small businesses down the road.

¹ 87 FR 62219

² 87 FR 62220



Further, NDA believes employers and workers should have the freedom and flexibility to engage in labor arrangements that meet the specific needs and preferences of both parties involved. The DOL's proposed rule as written risks damaging and disrupting the relationship between employers and individuals who want the freedom to operate as independent contractors in the economy. The consequences resulting from this proposed rule could lead to diminished economic growth and job creation, especially in the construction industry.

NDA urges the DOL to pursue an independent contractor regulation which strikes the appropriate balance in protecting the rights of employers and workers while ensuring workers have the ability to pursue employment opportunities that work best for their career. The best way to achieve this balance is to implement a simplified economic reality test, similar to 2021, which provides clarity in the classification process and freedom for employers and workers.

Thank you for the opportunity to provide comment on this issue. For any questions, please contact NDA's Senior Legislative and Regulatory Coordinator Alex McIntyre at amcintyre@demolitionassociation.com.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lambert", is positioned above the typed name.

Jeff Lambert
Chief Executive Officer
National Demolition Association (NDA)