

House Passes NDA-Backed Resolution to Rescind Joint Employer Rule

Today, the House of Representatives passed House Joint Resolution 98 to overturn the National Labor Relations Board's (NLRB) final rule to alter the standard for determining joint employer status. The Congressional Review Act allows Congress to overturn regulations proposed by federal agencies. Eight Democrats joined every Republican to approve the resolution with a bipartisan majority of 206-177.

Last month, NDA [announced support](#) for this resolution and has been working with Members of Congress to garner support for the legislation on Capitol Hill. NDA has significant concerns with NLRB's final rule to redefine the joint employer relationship and its potential impact on demolition contractors and small businesses. NDA will now be advocating for passage of the resolution in the U.S. Senate.

DOL Announces Final Independent Contractor Rule

This week, the Department of Labor (DOL) announced their [final rule](#) to change the process for classifying employees under the Fair Labor Standards Act (FLSA). This final rule rescinds the previous Independent Contractor rule that was promulgated under the Trump administration in 2021. Under the proposed rule, DOL would return to a "totality of the circumstances" analysis to evaluate the economic realities of the relationship between a worker and a company. The final rule applies the following six factors to analyze employee or independent contractor status under the FLSA:

- opportunity for profit or loss depending on managerial skill;
- investments by the worker and the potential employer;
- degree of permanence of the work relationship;
- nature and degree of control;
- extent to which the work performed is an integral part of the potential employer's business; and
- skill and initiative.

This new analysis will likely result in more workers being classified as employees and falling under FLSA regulations, rather than being classified as independent contractors. NDA [submitted comments](#) in 2022 opposing DOL's proposal and will be working with Congress to pressure the Biden administration to withdraw their final rule. Further guidance about the final rule from DOL can be found below.

Independent Contractor Rule Guidance

- [Frequently Asked Questions](#) – General and substantive questions about the final rule
- [Small Entity Compliance Guide](#) – A guide to assist small businesses to comply with the final rule, including an overview of the rule, the six factors of the economic reality test, common questions, and additional resources.

DOL Announces Adjustments to OSHA Civil Penalties for 2024

The U.S. Department of Labor has issued a [final rule](#) announcing adjustments to Occupational Safety and Health Administration (OSHA) civil penalty amounts. The final rule is effective January 15, 2024. The OSHA's maximum penalties for serious and other-than-serious violations will increase from \$15,625 per violation to \$16,131 per violation. The maximum penalty for willful or repeated violations will increase from \$156,259 per violation to \$161,232 per violation. The Inflation Adjustment Act requires DOL to annually adjust its civil money penalty levels for inflation no later than January 15 of each year.