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DOL Proposes New(ish) Independent Contractor Rule

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Richard Reibstein

Richard Reibstein, a partner in Troutman Pepper Locke's Labor + Employment Practice Group, was quoted in the February 26, 2026 *Brightmine* article, "DOL Proposes New(ish) Independent Contractor Rule."

> Richard Reibstein, co-head of Troutman Pepper Locke's independent contractor misclassification and compliance team, said the proposed rule is not legally significant for three main reasons:
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> 1. It's the courts, not the DOL, that ultimately decide whether a worker is an employee or an independent contractor.
> 2. The courts will probably disregard the DOL's new rule. After all, no court ever relied on any of the prior DOL regulations in deciding an independent contractor misclassification case, and it's unlikely they will start doing so now.
> 3. The FLSA is only a small piece of a patchwork of independent contractor laws. Most independent contractor litigation is based at least in part on state laws, and federal regulations have no effect in that area. Moreover, the FLSA rule does not apply to other federal laws, such as the Employee Retirement Income Security Act (ERISA) or the National Labor Relations Act (NLRA), which have their own classification tests.
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> However, Reibstein cautioned that the new rule may have a significant practical effect.
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> "The increased focus on independent contractor status that is prompted by [the new rule] will likely increase the number of lawsuits, because it puts this issue on the front pages of newspapers and other media outlets," he said. "That prompts more workers to seek out plaintiffs' class action lawyers to find out whether they may have a claim."
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> In response, Reibstein said businesses that hire independent contractors should reevaluate their compliance. In particular, he recommended that they look at how they structure, document and implement their independent contractor relationships.

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