

# What does the 2024 FLSA Independent Contractor Rule mean for trucking?

## QUICK QUESTIONS:

- Does this Rule implement the ABC Test, like AB5 in California? **No**
- Does this Rule likely change anything for a single-truck owner-operator operating under their own authority? **No**
- Does this Rule likely change anything for drivers currently working as an employee? **No**
- What does this Rule mean for owner-operators with a lease working under another carrier's authority, or a motor carrier that hires owner-operators through a lease agreement? **These operations should not be significantly affected by the Rule. This is especially true if carriers and owner-operators comply with federal Truth-in-Leasing (TIL) requirements.**
- Was anything wrong with the 2021 Rule? **While we generally support the 2021 Classification Rule, we strenuously object to a provision that effectively enables large carriers to mandate the independent truckers they contract with use dangerous speed limiters and other alleged "safety" equipment.**

## SUMMARY OF THE RULE:

- The stated purpose of the Rule is to return to the worker classification test in place prior to the final rule issued in 2021.
- The Rule establishes a six factor test to determine whether a worker is an employee or independent contractor under the FLSA. This test is supposed to answer the ultimate question of whether a worker is "in business for themselves." Most of the six factors of the classification test will weigh in favor of independent contractor status. But generally speaking, factors 1, 2, 3, 4, 6 either should or can favor independent contractor status. (See table on reverse for details.)
- Unlike AB5's forced use of the ABC Test, the Rule emphasizes that no one factor is determinative, no single factor is predetermined to be more important, and the test is not meant to be applied in a mechanical way. Classification determinations are made on a case-by-case basis after all facts of each situation are considered. This is something OOIDA advocated for. While OOIDA is able to make a general assessment about how common factors of lease arrangements will be interpreted under this test, each situation must be considered independently.

## THE DEPARTMENT ADDRESSED MANY OF OOIDA'S SPECIFIC COMMENTS AND CONCERNS IN THE RULE:

- DOL clarified that contractual requirements to comply with a specific legal obligation don't indicate control. For trucking, the most notable effect is that compliance with the TIL criteria that a truck be leased exclusively to a single carrier doesn't indicate employee status. Conversely, the Rule clarifies that contractual provisions going beyond a specific legal requirement, such as those the carrier says will improve safety, may be indicative of control.
- As OOIDA requested, the Rule specifies that driving truck is a specialized skill: "the Department ... recognizes the distinctive nature of CDLs and ... drivers performing work requiring such licenses are likely using specialized skills as compared to drivers generally."
- As OOIDA requested, the Department clarified that an individual driver's investment doesn't have to equal a carrier's to be considered an independent contractor. Instead, DOL clarified that the relative investment should be examined qualitatively (what type of investments) and not just quantitatively (how much). Also, at OOIDA's request, DOL clarified that investing in a truck is a major capital investment that can indicate independent contractor status.
- As OOIDA requested, DOL clarified that working exclusively for one carrier doesn't automatically make a driver an employee. In response to OOIDA's comment, the Department reaffirmed, "the ability to work for others is just one consideration within the control factor and agrees ... that it is relevant, but not determinative, of whether the worker is an employee or independent contractor...the economic reality test is a totality-of-the circumstances test where no one factor is dispositive."

Factor	Facts to be considered	Indicates Independent Contractor	Indicates Employee
<b>1. Opportunity for profit or loss depending on their management and decision-making skill</b>	This factor considers opportunities for profit or loss based on managerial skill that affect the worker's economic success or failure in performing the work. Factors include whether the worker determines or can meaningfully negotiate pay; whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed; and whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space.	If a worker has the opportunity for profit or loss using managerial skill, this indicates independent contractor.	If a worker has no opportunity for a profit or loss using managerial skill, then this factor suggests that the worker is an employee. Some decisions by a worker that can affect the pay, such as the decision to work more hours or take more jobs at a fixed rate per hour or per job, generally do not reflect the exercise of managerial skill indicating independent contractor.
<b>2. Capital investment in their own equipment</b>	This factor examines whether any investments by a worker are capital or entrepreneurial in nature. Also examines the relative investment of the worker with the hiring business. The worker's investments do not have to be equal to the potential employer's investments and should not be compared only in terms of the dollar values of investments.	Investments that are capital or entrepreneurial in nature and thus indicate independent contractor status generally support an independent business and serve a business-like function, such as increasing the worker's ability to do different types of or more work, reducing costs, or extending market reach.	Costs to a worker of tools and equipment to perform a specific job, costs of workers' labor, and costs that the potential employer imposes unilaterally on the worker, for example, are not evidence of capital or entrepreneurial investment and indicate employee status.
<b>3. Permanence of relationship</b>	This factor examines the permanency of the work relationship.	This factor weighs in favor of the worker being an independent contractor when the work relationship is definite in duration, non-exclusive, project-based, or sporadic based on the worker being in business for themselves and marketing their services or labor to multiple entities.	This factor weighs in favor of the worker being an employee when the work relationship is indefinite in duration, continuous, or exclusive of work for other employers.
<b>4. Nature and degree of employer control</b>	Relevant facts include whether the potential employer sets the worker's schedule, supervises the performance of the work, or explicitly limits the worker's ability to work for others; reserves the right to supervise or discipline workers, or places demands or restrictions on workers that do not allow them to work for others or work when they choose.	More control by the worker favors independent contractor status.	More control by the potential employer favors employee status.
<b>5. Work performed is an integral part of the potential employer's business</b>	This factor considers whether the work performed is an integral part of the potential employer's business. This factor does not depend on whether any individual worker in particular is an integral part of the business.	This factor weighs in favor of independent contractor when the work performed is not critical, necessary, or central to the potential employer's principal business.	This factor weighs in favor of employee when the work performed is critical, necessary, or central to the potential employer's principal business.
<b>6. Driver's skill and initiative</b>	This factor considers whether the worker uses specialized skills to perform the work and whether those skills contribute to business-like initiative.	The use of specialized skills in connection with business-like initiative indicates that the worker is an independent contractor.	Where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.