Government Liaison Report

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Federal News

DOL Issues Proposed Worker Classification Rule

On February 27, the U.S. Department of Labor (DOL) issued a proposed rule that would modify how to determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA) [91 F.R. 9932, 2-27-26]. The analysis used to determine worker classification in the proposed rule would also apply to the Family and Medical Leave Act (FMLA).

Proposed rule replaces 2024 rule The proposed rule would rescind the DOL's worker classification rule issued in 2024 and would replace it with a rule similar to the worker classification rule issued in 2021 with a few modifications. The 2024 final rule set forth an analysis for determining employee or independent contractor status that relied on a totality-of-the-circumstances analysis of the economic reality test rather than using the "core factors" from the 2021 rule. The DOL began reviewing the 2024 rule after it was challenged in several federal courts. The proposed rule would:

- Apply an "economic reality" test to determine whether a worker is in business for himself or herself as an independent contractor or is an employee economically dependent on an employer for work. The proposed rule also identifies factors that employers can use to help determine a worker's status.
- Clarify that the actual duties of the worker are more relevant than what may be included in the worker's contract.
- Provide eight fact-specific examples to apply the factors to real-life circumstances.

The two main core factors The economic reality test requires that certain factors be analyzed to show whether workers are economically dependent upon the employer for work versus being in business for themselves. The proposed rule states that the main flaw of the 2024 rule is its failure to provide effective guidance on how different factors in its multi-factor balancing test should be weighed or applied together. The economic reality factors are not exhaustive, and no single factor is determinative. However, the proposed rule identifies two "core factors" that employers should consider first when determining a worker's status. These two core factors would matter the most in the decision and would typically carry greater weight in the analysis than any other factor. If both factors point toward the same classification (whether employee or independent contractor), there is a substantial likelihood that this is the correct classification for the worker.

- The nature and degree of control over the work. The DOL is proposing to readopt text from the 2021 rule that explains the control factor weighs toward the worker being an independent contractor (rather than an employee) when the worker exercises substantial control over key aspects of the performance of the work, such as scheduling, selection of projects, and the ability to work for others, including competitors. The control factor would weigh in favor of the worker being an employee if the potential employer exercises substantial control over key aspects of the performance of the work, such as controlling the worker's schedule or workload or by requiring the worker to work exclusively for the potential employer. The proposed rule would readopt guidance from the 2021 rule that clarifies when a potential employer places certain compliance requirements on a worker it does not constitute control that makes the worker more or less likely to be an employee. Compliance requirements include requiring workers to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses.
- (2) The individual's opportunity for profit or loss. The DOL is proposing to readopt text from the 2021 rule that discusses a worker's opportunity for profit or loss. This factor would weigh toward the worker being an independent contractor to the extent the worker has an opportunity to earn profits or incur losses based on his or her own initiative, such as managerial skill, business acumen or judgment, or management of his or her investment in the potential employer's business. This factor would weigh toward the individual being an employee to the extent

the worker is unable to affect his or her earnings or is only able to do so by working more hours or faster. This factor would consider the individual worker's investment only and not the relative investments of both the worker and the potential employer. The proposed rule would readopt an example from the 2021 rule that illustrates how only the individual worker's investment should be considered.

Other factors to consider The proposed rule would readopt three other factors identified in the 2021 rule. These factors would carry less weight in the analysis than the two core factors.

- The amount of skill required for the work. This factor would indicate independent contractor status if the work requires specialized training or skill that the potential employer does not provide. This factor would indicate employee status when the work requires no specialized training or skill and/or the work is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job. The individual worker's exercise of initiative would not be considered under this factor.
- The degree of permanence of the working relationship between the individual and the potential employer. This factor would weigh in favor of the worker being an independent contractor if the work relationship is definite in duration or sporadic, which may include regularly occurring fixed periods of work. Work that is seasonal in nature would not necessarily indicate independent contractor classification by itself. This factor would weigh in favor of the worker being an employee if the work relationship is instead indefinite in duration or continuous.
- Whether the work is part of an integrated unit of production. This factor would weigh in favor of the worker being an independent contractor when the work is able to be distinguished from the potential employer's production process. This factor would weigh in favor of the worker being an employee when the work is a component of the potential employer's integrated production process for a good or service. The proposed rule would clarify that this factor is different from the concept of the importance of the worker's duties to the potential employer's business. In addition, the proposed rule would readopt text from the 2021 rule that states: "Additional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work." The precise

weight of any additional factors would depend on the circumstances of each case and would be unlikely to outweigh either of the core factors.

Submitting comments Comments can be submitted electronically (include RIN 1235-AA46) or by mail to: Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave. N.W., Washington, DC 20210. Comments must be received by April 28.

IRS Releases 2026 Form 941 and Instructions

The IRS released the 2026 Form 941, Employer's Quarterly Federal Tax Return, and its instructions to be used beginning with the first quarter of 2026. The Form 941 contains no changes from the 2026 draft version and no major changes from the 2025 Form 941. Employers should be sure to use the March 2026 revision beginning with the first quarter of 2026. The IRS expects the March 2026 revision will be used for all four quarters of 2026.

What's new

- **Aggregate return filers.** Aggregate return filers must use the new Aggregate Return Filers Only section on Form 941 to identify if they are filing an aggregate return as a section 3504 agent, certified professional employer organization (CPEO), or other third party.
- **Electronic payments only.** Executive order (EO) 14247, Modernizing Payments to and From America's Bank Account, mandates the transition to electronic payments for all federal disbursements. This means the IRS will now issue Form 941 tax refunds by direct deposit and will not send paper checks. Employers can still choose to have overpayments applied to their next return by checking the appropriate box on the new Line 15b. Line 15 was split into separate lines – 15a through 15e – for employers to enter banking information to receive a refund. EO 14247 also mandates the transition to electronic payments for all payments made to the federal government, which means employers must pay any balance due on Form 941 electronically. Employers must use electronic funds transfer (EFT) to make federal tax deposits, which can be made using the Electronic Federal Tax Payment System (EFTPS), IRS Direct Pay, or an IRS Business Tax Account.
- **Transcripts available electronically.** Employers can access Form 941 return transcripts for tax years 2023 and later using an IRS Business Tax Account.
- **Withholding on qualified tips and overtime compensation**. For tax years 2025-2028, Public Law 119-21, known as the One Big Beautiful Bill Act (OBBBA), allows individuals to deduct up to $25,000 of qualified tips received in occupations that

customarily and regularly received tips on or before December 31, 2024, on their income tax returns. Tips are still generally subject to both the employer share and employee share of social security tax and Medicare tax if the tips received are $20 or more per month. The OBBBA also allows individuals (employees and other workers not treated as employees) to deduct up to $12,500 ($25,000 if married filing jointly) of qualified overtime compensation on their income tax returns. Overtime compensation is still generally subject to both the employer share and employee share of social security tax and Medicare tax. More information about the OBBBA is available on PayrollOrg's website in the Payroll Hot Topics section under the Compliance tab.

State Unemployment Insurance Taxable Wage Bases for 2026

State unemployment insurance (UI) taxes are determined by applying a certain percentage to the taxable wages paid by the employer. The Federal Unemployment Tax Act (FUTA) requires that each state's taxable wage base must at least equal the FUTA wage base of $7,000 per employee. The states use varying formulas for determining their taxable wage base, with some tying it by law to the FUTA wage base and others using a percentage of the state's average annual wage (see The Payroll Source®, §7.2-2). Employers should be aware that due to UI trust fund balances that are different than anticipated and economic concerns regarding employer taxes, some states may make changes to their taxable wage bases later this year. Following is a chart of state taxable wage bases for 2026 and 2025 to help you ensure your payroll operations comply with the applicable wage bases for 2026. States that have changed their wage base for 2026 are in bold. The wage bases are also posted on the PayrollOrg website.

Image on the following page from *Payroll Currently Vol 34 Issue 3 Mar 6, 2026*

State/Territory	2026	2025	State/Territory	2026	2025
Alabama	$8,000	$8,000	Nebraska	$9,000[2]	$9,000
Alaska	**54,200**	51,700	**Nevada**	**43,700**	41,800
Arizona	8,000	8,000	New Hampshire	14,000	14,000
Arkansas	7,000	7,000	**New Jersey**	**44,800**	43,300
California	7,000	7,000	**New Mexico**	**34,800**	33,200
Colorado	**30,600**	27,200	**New York**	**17,600**	12,800
Connecticut	**27,000**	26,100	**North Carolina**	**34,200**	32,600
Delaware	**14,500**	12,500	**North Dakota**	**46,600**	45,100
District of Columbia	9,000	9,000	Ohio	9,000	9,000
Florida	7,000	7,000	**Oklahoma**	**25,000**	28,200
Georgia	9,500	9,500	**Oregon**	**56,700**	54,300
Hawaii	**64,500**	62,000	Pennsylvania	10,000	10,000
Idaho	**58,300**	55,300	Puerto Rico	7,000	7,000
Illinois	**14,250**	13,916	**Rhode Island**	**30,800**[3]	29,800
Indiana	9,500	9,500	South Carolina	14,000	14,000
Iowa	**20,400**	39,500	South Dakota	15,000	15,000
Kansas	**15,100**	14,000	Tennessee	7,000	7,000
Kentucky	**12,000**	11,700	Texas	9,000	9,000
Louisiana	**7,000**	7,700	**Utah**	**50,700**	48,900
Maine	12,000	12,000	**Vermont**	**15,400**	14,800
Maryland	8,500	8,500	**Virgin Islands**	**32,100**	31,100
Massachusetts	15,000	15,000	Virginia	8,000	8,000
Michigan	9,500[1]	9,500	**Washington**	**78,200**	72,800
Minnesota	**44,000**	43,000	West Virginia	9,500	9,500
Mississippi	14,000	14,000	Wisconsin	14,000	14,000
Missouri	**9,000**	9,500	**Wyoming**	**33,800**	32,400
Montana	**47,300**	45,100			

[1] Michigan – $9,000 for contributing employers that are not delinquent on UI payments (i.e., most employers).
[2] Nebraska – $24,000 for employers in highest UI tax rate group (category 20).
[3] Rhode Island – $32,300 for employers in the highest UI tax rate group.

SIFL Rates for First Half of 2026 Announced

The Standard Industry Fare Level (SIFL) rates and the terminal charge for the period January 1, 2026 – June 30, 2026, have been issued. SIFL rates and the terminal charge are factors used to calculate the value of personal flights on employer-provided aircraft for purposes of federal income, FICA, and FUTA taxes. For the first half of 2026, the terminal charge increased to $54.48 (from $53.62). The SIFL rates also increased to: $0.2980 (from $0.2933) per mile for the first 500 miles $0.2272 (from $0.2237) per mile for miles 501 to 1,500 and $0.2184 (from $0.2150) per mile for miles over 1,500 [SIFL Fare Formulas, Attachment B, released 2-12-26]

DOL Updates Federal Contractor Minimum Wage for Some Contracts

The U.S. Department of Labor (DOL) announced the minimum wage rate for workers performing work on some federal contracts. Beginning May 11, the minimum wage rate that generally must be paid to workers performing work on or in connection with contracts covered by executive order (EO) 13658 will increase to $13.65 per hour from $13.30 per hour, and the required minimum cash wage for tipped workers will increase to $9.55 per hour from $9.30 per hour [91 F.R. 5783, 2-9-26]. The rates had not been increased since 2024.

IRS Grants Waivers for 2025 Foreign Exclusion Requirement

The IRS released a supplemented list of the seven countries for which some of the foreign earned income exclusion requirements of IRC §911 are waived for 2025 [Rev. Proc. 2026-16, 3-4-26]. The list contains the Democratic Republic of the Congo (with a departure date of January 28, 2025) Haiti (with a departure date of January 1, 2025) Iraq (with a departure date of June 11, 2025) Lebanon (with a departure date of June 22, 2025) Mali (with a departure date of October 30, 2025) South Sudan (with a departure date of March 7, 2025) and Ukraine (with a departure date of January 1, 2025). For 2024, waivers were granted for Bangladesh, Haiti, Iraq, and Ukraine (Rev. Proc. 2025-17, 2025-13 IRB 1382)

Spring Ahead to Daylight Saving Time

Daylight Saving Time (DST) will begin on Sunday, March 8, at 2 a.m., when clocks are set ahead 1 hour. A shift worker on duty at that time will work 1 hour less than usual. If you pay the worker for a full shift of 8 hours rather than 7, you do not need to count the extra hour as an hour worked for overtime purposes and do not need to include the extra pay when calculating the employee's regular rate of pay for the workweek (see The Payroll Source®, §2.6-4 for further information). DST is not observed in the states of Arizona (other than inside the Navajo Nation) and Hawaii, and in the U.S. territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

State News

California *March 15 due date for EWA filings reminder.* Earned wage access (EWA) providers must submit their first annual reports by March 15 through the Department of Financial Protection and Innovation's (DFPI) Self-Service Portal. According to the DFPI, employer-integrated EWA products may meet the definition of "obligor-based advances" under state regulations, which are income-based advances in which the provider intends to collect amounts that have accrued to benefit the consumer (employee) directly from the employer. If so, registration and annual reporting requirements apply [DFPI, Income-Based Advances].

Colorado *PSL rules amended.* Effective 2-1-26, paid sick leave (PSL) rules were amended to clarify that while PSL must be paid at the same hourly rate or salary and with the same benefits, it does not require employers to pay overtime premiums or any leave pay for holiday time off (when calculating the PSL pay rate). Also, if the pay rate that the employee would have been paid for work hours is known, the employer must pay that rate for PSL (this applies to employees who work at a single rate of pay). Employers are not required to pay extra wages to employees where use of PSL does not change their pay (for example, salaried employees do not earn extra PSL wages when using PSL). If an employee is paid wages in addition to commissions, commissions are not included in the PSL rate. If an employer knows an employee's pay rate for the shift when an employee will take PSL, no lookback calculation is required [Department of Labor and Employment, Basis for 2026 Wage Protection Rules, 12-8-25 7 C.C.R. 1103-7].

Delaware *PFML regulations amended.* The Department of Labor (DOL) amended regulations for paid family and medical leave (PFML), effective 12-15-25. The definition of an employee changed from individuals working 60% of their hours in state to individuals earning 60% of their wages in state. Employees can take up to 6 weeks of leave in a 24-month period, which is measured as the 24-month period that ends on the first day of requested leave. Employers enrolling in any line of coverage voluntarily (public or private) may not require employees to contribute to that coverage. Employers cannot require employees to use earned, unused paid time off before PFML unless they agree in a signed writing. Employer-provided disability may be used to supplement PFML benefits up to the employee's average weekly wage [19 Del. Adm. Code 1401].

District of Columbia *Minimum wage, tip credit to increase.* Effective 7-1-26, the minimum wage will increase to $18.40 per hour from $17.95 per hour. Also effective 7-1-26, the minimum cash wage for tipped employees will increase to $10.30 per hour from $10 per hour. This means that the tip credit will increase to $8.10 per hour from $7.95 per hour [Office of Wage-Hour Compliance, 2026 Minimum Wage Increase Notice].

Idaho *State to conform with OBBBA*. The State Tax Commission (STC) announced that the governor signed legislation updating the state's conformity with the Internal Revenue Code (IRC) to 1-1-26, which is after Public Law 119-21, known as the One Big Beautiful Bill Act (OBBBA), was enacted. The STC will need to update its forms, instructions, and systems to incorporate the conformity changes, including the deductions for "no tax on tips" and "no tax on overtime" before it can process personal income tax returns. The STC is developing a plan to address taxpayers who have already filed their state tax returns [H.B. 559, L. 2026 STC, News, 2-17-26].

Illinois *Withholding requirements for loan-out companies updated.* For 2026, both film production companies and loan-out companies are required to report withholding income tax paid or paid on their behalf using Form IL-941, Illinois Withholding Income Tax Return. A loan-out company is a personal service corporation that is under contract with a production company to provide artists, crew, actors, producers, or directors for the performance of services used directly in a production. Loan-out companies are considered the employer of record and must report withholding income tax for each employee [DOR, Informational Bulletin FY 2026-16, February 2026].

Minnesota *State does not conform to OBBBA*. The Department of Revenue (DOR) posted a chart with provisions from Public Law 119-21, known as the One Big Beautiful Bill Act (OBBBA), explaining the impact to Minnesota, the impacted tax years, and the impacted tax forms. For the "no tax on tips" and "no tax on overtime" sections, the impact to Minnesota is listed as a "no" for both. Previously, the DOR explained that the state conforms to the IRC as of 5-1-23, which is before the OBBBA was enacted.

New Jersey *Electronic reporting of employee separation required.* Employers are required to report employee separations to the Department of Labor and Workforce Development (DOLWD) electronically within 7 days of separation. Separations include when an employee quits, is fired, retires, or is laid off. Employers should use the new Employer Access portal to report separations. Employers with an established account will log in to the portal via the MyNewJersey website. Employers can sign up for an account via the portal [DOLWD, Division of Employer Accounts, Get Started With Employer Access].

New Mexico *Santa Fe city minimum wage increased.* Effective 1-1-26, the minimum wage for employees of the city of Santa Fe increased to $17.50 per hour from $15 per hour. Effective 1-1-27, the minimum wage for all employees will increase to $17.50 per hour from $15 per hour. The minimum wage will increase annually for inflation beginning 3-1-28 and will be based on the Consumer Price Index and the fair market rent for a two-bedroom unit in the city. The city does not specify a tip credit, so the state tip credit of $9 per hour applies [Ordinance No. 2025-21, L. 2025].

Santa Fe County minimum wage increased. Effective 3-1-26, the minimum wage for Santa Fe County increased to $15.40 per hour from $15 per hour. The tip credit increased to $10.78 per hour from $10.50 per hour. The minimum cash wage increased to $4.62 per hour from $4.50 per hour [Santa Fe County, Living Wage].

New York *New York City paid sick and safe leave expanded.* Effective 2-22-26, the New York City paid sick and safe leave (PSSL) law expands to allow additional unpaid leave. Employees will have access to 32 hours of unpaid sick and safe leave on their first day of employment. The employer is not required to carry over unused unpaid leave from one year to the next. The unpaid leave is in addition to paid leave. An employee may use available PSSL to cover unpaid sick and safe leave. In addition, the use of PSSL now covers public disasters and workplace violence [Int. No. 780-A, L. 2025].

Online services accounts updated. The Department of Taxation and Finance (DTF) changed Business Online Services accounts to allow five Business Master Administrators on the account (previously two). An Employee Summary page was added to make managing accounts easier. A new role has been added: managers. Managers can add and remove users to the account and update the online services that users are authorized to access.

North Carolina *State does not conform to OBBBA.* The Department of Revenue (DOR) said the state conforms to the IRC as of 1-1-23, which is before Public Law 119-21, known as the One Big Beautiful Bill Act (OBBBA), was enacted. The DOR's Q&A includes the question: "Can I deduct the new federal deductions for tips, overtime pay, car loan interest, and the new senior deduction (collectively New OBBBA Deductions) on my 2025 North Carolina individual income tax return?" The DOR answered no. The state must pass legislation to allow taxpayers to reduce state adjusted gross income for similar deductions.

Oregon *State conforms to some OBBBA*. The Department of Revenue (DOR) said its general conformity date for federal income tax laws is 12-31-23, which is before Public Law 119-21, known as the One Big Beautiful Bill Act (OBBBA), was passed. However, it conforms to the definition of federal taxable income on a current basis (with some exceptions). Oregon allows the same deduction for qualified tip income and overtime wages as the federal income tax return. However, nonresidents can deduct only the overtime portion of wages earned while physically working in Oregon. For tip income, nonresidents can deduct only tips received while physically working in Oregon as an employee or from a business the worker owns and operate within Oregon [DOR, Publication OR-17, Individual Income Tax Guide, rev. 1-29-26]