

A Wage & Hour Annual Report

DOL Developments in 2021 and Looking Forward to 2022

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Compliance **HR**



Michael Worth

Vice President of Sales

ComplianceHR

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Introducing the Navigator Suite

ComplianceHR SmartScreen



COVID-19 Screening

Efficiently screens your employees and tracks results as they return to work, while helping you ensure privacy and 50-state compliance.

+ Manage Employees

🔍 Track Results

COVID-19 Resource Center



COVID-19 Resource Center

Quickly delivers answers to the most pressing employment-related COVID-19 topics such as health and safety, leaves of absence and more.

🔍 Use FAQ Rapid Reference

🔍 View Resource Documents

PolicySmart



Be Confident. Stay Compliant.

PolicySmart's simple templates and checklists make it easy to create and maintain your policies. Ensure you never miss an update with our intuitive news and notifications about regulatory changes.

🔍 View Policy Documents

🔍 View Policy News

⚙️ Configure Jurisdictions

Navigator IC



Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

+ Create New Evaluation

🔍 View Evaluations

▶ IC Agreement

Navigator OT



Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

+ Create New Review

🔍 View Reviews

🔍 View Evaluations

Navigator Leave



Leave Compliance

Generates state and federal compliant forms, and quickly delivers federal and state-specific leave requirements (and paid sick leave or "PSL") through Rapid Reference tools.

+ Create New Form

🔍 View Forms

▶ Use PSL Rapid Reference

▶ Use Rapid Reference

Navigator Pay Practices



Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

▶ Find Minimum Wage

▶ Use Rapid Reference

Navigator Onboarding



Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

+ Create New Document

What You'll Receive

- Full slide presentation (pdf format)
- Link to recorded audio presentation
- ComplianceHR demonstration and free trial!



Q & A Box on your screen (questions are confidential – visible to presenters only)



Tammy McCutchen

Strategic Adviser,
ComplianceHR

tammy@compliancehr.com

- Former Administrator, US-DOL, Wage & Hour Division
- A leading authority of federal and state wage and hours law
- Primary architect of DOL's overtime exemptions regulations & ComplianceHR's Navigator IC and Navigator OT applications



Agenda

- WHD Leadership
- Joint Employment
- Independent Contracting
- Overtime
- Enforcement
- Wage & Hour ABCs

WHD Leadership



Acting Administrator Jessica Looman

- Executive Director, Minnesota State Building and Construction Trades Council
- Commissioner, Minnesota Dept. of Commerce
- Deputy Commissioner, Minnesota Dept. of Labor & Industry
- General Counsel, Laborers District Council of Minnesota and North Dakota

WHD Leadership



Administrator Nominee David Weil

- Served as Administrator from 2014 to 2017
- Initially nominated by President Biden in June 2021, but confirmation deadlocked in the Senate HELP committee
- Renominated on Jan. 4
- Voted out of committee, 11-10, on Jan. 13 – Senator Rand (R – KY) was absent
- Fate before full Senate unsure

Weil in West Virginia

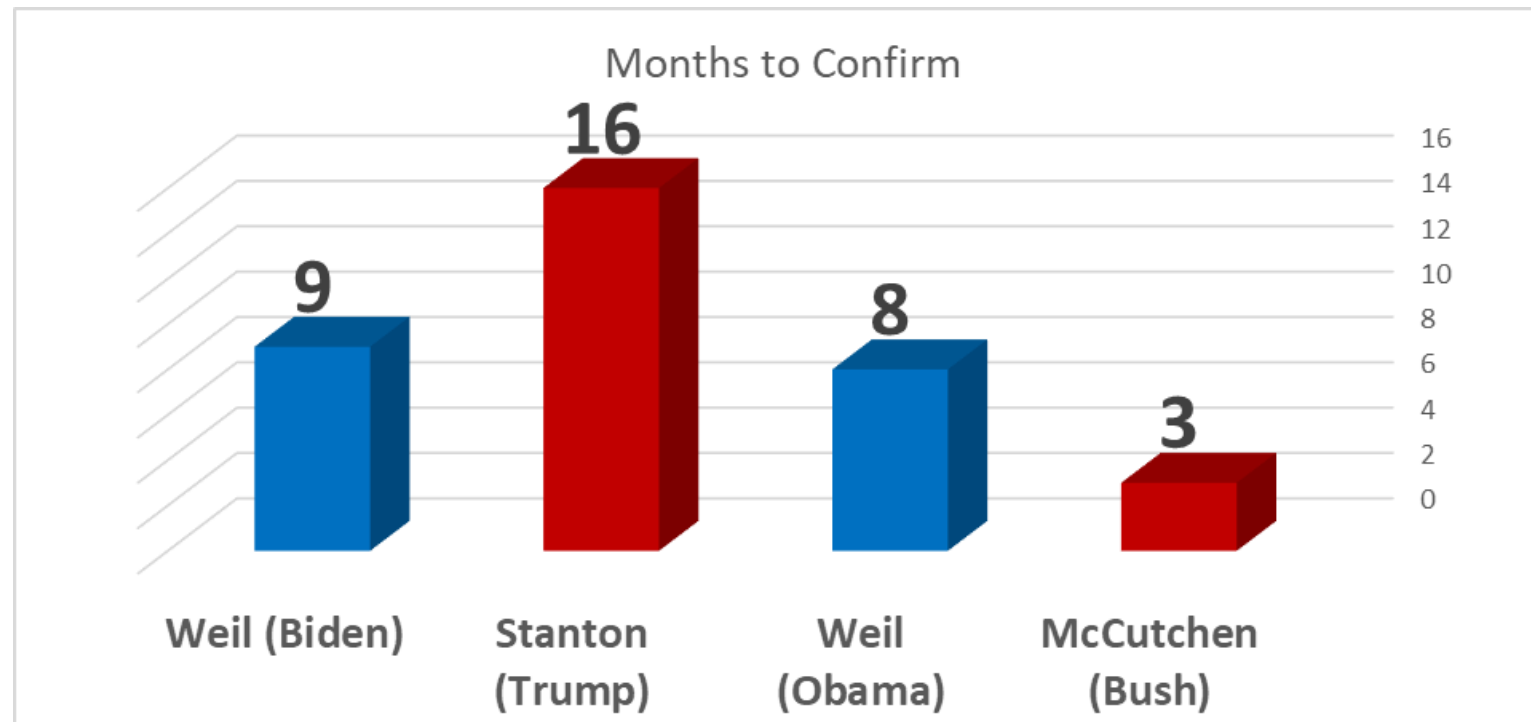
News Release

US LABOR DEPARTMENT HELPS MORE THAN 5,300
PENNSYLVANIA AND WEST VIRGINIA
OIL AND GAS WORKERS RECOVER \$4.5M IN BACK WAGES
FOR UNPAID OVERTIME

Multi-year initiative finds widespread and significant violations

"The oil and gas industry is one of the most fissured industries. Job sites that used to be run by a single company can now have dozens of smaller contractors performing work, which can create downward economic pressure on lower level subcontractors," said [Dr. David Weil](#), administrator of the Wage and Hour Division. "Given the fissured landscape, this is an industry ripe for noncompliance."

How Long Does It Take To Confirm an Administrator?



Regulations

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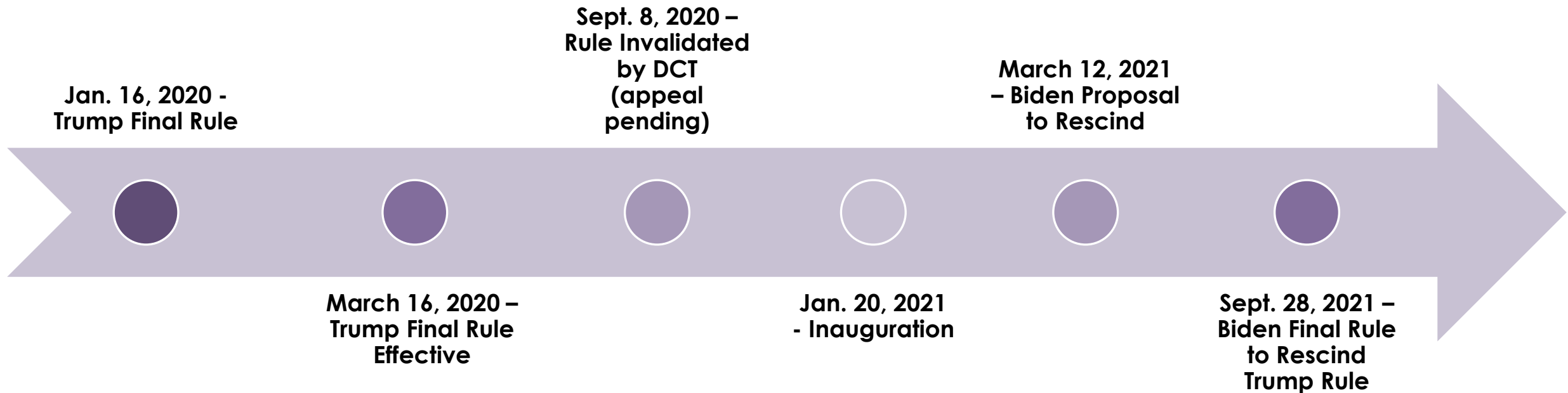
Joint Employment

**Trump Regulation:
Four-factor
balancing test, no
single factor is
dispositive**

Does the alleged employer:

1. Hire or fire the employee;
2. Supervise and control the employee's work schedule or conditions of employment to a substantial degree;
3. Determine the employee's rate and method of payment; and
4. Maintain the employee's employment records.

Death of the Joint Employer Regulation



What's Next for Joint Employment?

Administrator's Interpretation FLSA2016-1 (Jan. 20, 2016)

https://www.hallrender.com/wp-content/uploads/2016/01/DOL_Joint_Employment_1_20_16.pdf

Administrator's Interpretation No. 2016-1: Joint Employment Under the FLSA and MSPA - U.S. Department of Labor Wage and Hour Division (WHD)

UNITED STATES DEPARTMENT OF LABOR

All DOL WHD Advanced Search

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Wage and Hour Division

DOL Home > WHD > FLSA > Joint Employment AI > Administrator's Interpretation No. 2016-1

U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210

Administrator's Interpretation No. 2016-1 (PDF)

January 20, 2016
Issued by ADMINISTRATOR DAVID WEIL

SUBJECT: Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act.

Through its enforcement efforts, the Department of Labor's Wage and Hour Division (WHD) regularly encounters situations where more than one business is involved in the work being performed and where workers may have two or more employers. More and more, businesses are varying organizational and staffing models by, for instance, sharing employees or using third-party management companies, independent contractors, staffing agencies, or labor providers. As a result, the traditional employment relationship of one employer employing one employee is less prevalent.¹ WHD encounters these employment scenarios in all industries, including the construction, agricultural, janitorial, warehouse and logistics, staffing, and hospitality industries.

The growing variety and number of business models and labor arrangements have made joint employment more common.² In view of these evolving employment scenarios, the Administrator believes that additional guidance will be helpful concerning joint employment under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, et seq., and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801, et seq.³

Whether an employee has more than one employer is important in determining employees' rights and employers' obligations under the FLSA and MSPA. It is a longstanding principle under both statutes that an employee can have two or more employers for the work that he or she is performing. When two or more employers jointly employ an employee, the employee's hours worked for all of the joint employers during the workweek are aggregated and considered as one employment, including for purposes of calculating whether overtime pay is due. Additionally, when joint employment exists, all of the joint employers are jointly and severally liable for compliance with the FLSA and MSPA.⁴ Where joint employment exists, one employer may also be larger and more established, with a greater ability to implement policy or systemic changes to ensure compliance. Thus, WHD may consider joint employment to achieve statutory coverage, financial recovery, and future compliance, and to hold all responsible parties accountable for their legal obligations.

Certainly, not every subcontractor, farm labor contractor, or other labor provider relationship will result in joint employment. This Administrator's Interpretation (AI) provides guidance on identifying those scenarios in which two or more employers jointly employ an employee and are thus jointly liable for compliance under the FLSA or MSPA.⁵ This AI first discusses the broad scope of the employment relationship under the FLSA and MSPA. It then discusses the concepts of horizontal and vertical joint employment and relevant joint employment regulations.

Horizontal joint employment exists where the employee has employment relationships with two or more employers and the employers are sufficiently associated or related with respect to the employee such that they jointly employ the employee. The analysis focuses on the relationship of the employers to each other. This AI explains that guidance provided in the FLSA joint employment regulation – which focuses on the relationship between potential joint employers – is useful when analyzing potential horizontal joint employment cases.

Vertical joint employment exists where the employee has an employment relationship with one employer (typically a staffing agency, subcontractor, labor provider, or other intermediary employer) and the economic realities show that he or she is economically dependent on, and thus employed by, another entity involved in the work. This other employer, who typically contracts with the intermediary employer to receive the benefit of the employee's labor, would be the potential joint employer. Where there is potential vertical joint employment, the analysis focuses on the economic realities of the working relationship between the employee and the potential joint employer. This AI explains that guidance provided in the MSPA joint employment regulation is useful when analyzing potential vertical joint employment. The structure and nature of the relationship(s) at issue in the

Independent Contracting

**Trump Regulation:
Adopting an
“economic reality”
test with two core
factors**

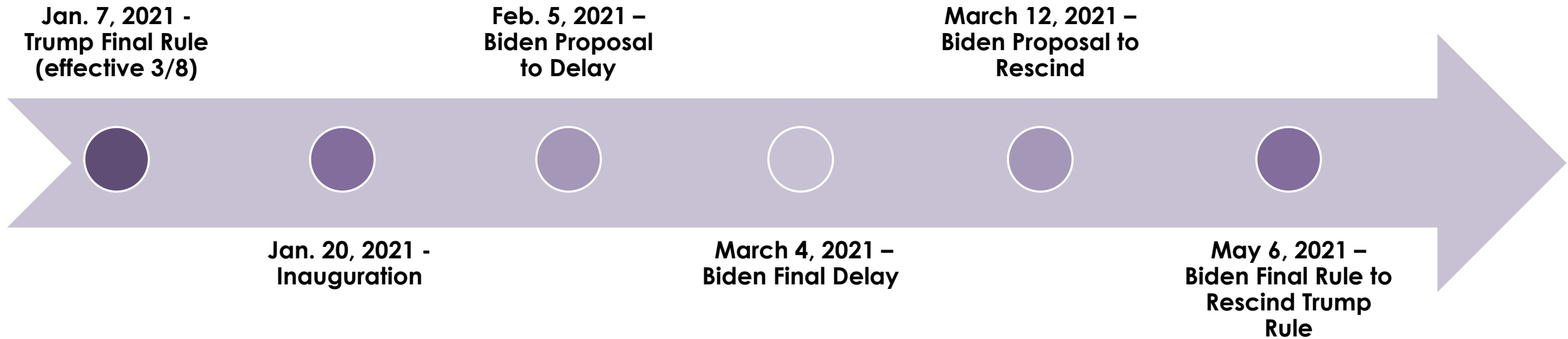
Economic Reality Test

- An individual is an employee “if as a matter of economic reality, the individual is economically dependent on that employer for work”

Two Core Factors:

- The nature and degree of control over the work
- The worker’s opportunity for profit or loss

Death of the Independent Contractor Regulation



What's Next for Independent Contracting?

Administrator's Interpretation 2015-1 (July 15, 2015)

“In sum, most workers are employees under the FLSA's broad definitions.”

https://www.blr.com/html_email/ai2015-1.pdf

This is Google's cache of https://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm. It is a snapshot of the page as it appeared on Jun 5, 2017 23:27:33 GMT.

The current page could have changed in the meantime. [Learn more](#)

[Full version](#) [Text-only version](#) [View source](#)

Tip: To quickly find your search term on this page, press **Ctrl+F** or **⌘-F** (Mac) and use the find bar.

United States Department of Labor

Wage and Hour Division

U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210

Administrator's Interpretation No. 2015-1 ([PDF](#))

July 15, 2015

Issued by ADMINISTRATOR DAVID WEIL

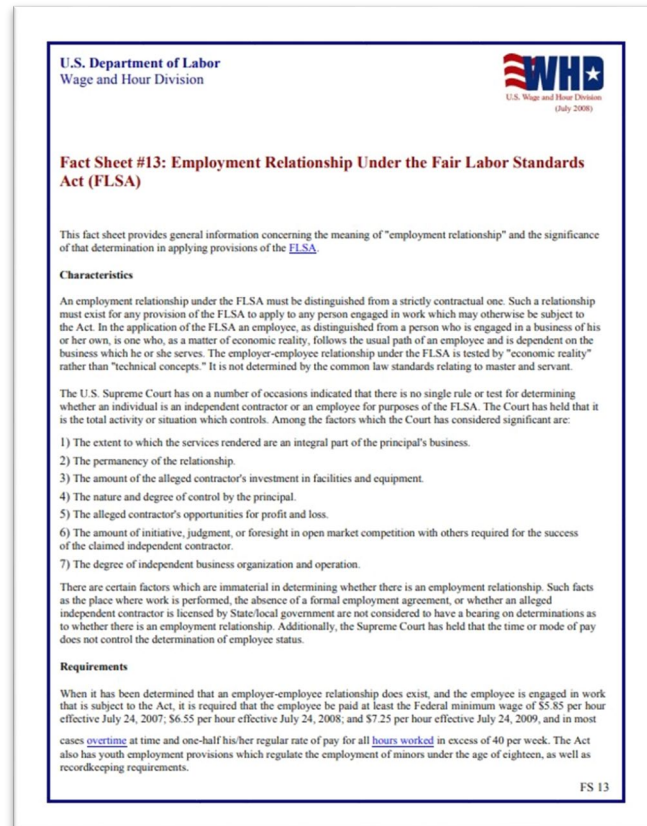
SUBJECT: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors.

Misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States, in part reflecting larger restructuring of business organizations. When employers improperly classify employees as independent contractors, the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance, and workers' compensation. Misclassification also results in lower tax revenues for government and an uneven playing field for employers who properly classify their workers. Although independent contracting relationships can be advantageous for workers and businesses, some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws.

The Department of Labor's Wage and Hour Division (WHD) continues to receive numerous complaints from workers alleging misclassification, and the Department continues to bring successful enforcement actions against employers who misclassify workers. In addition, many states have acknowledged this problematic trend and have responded with legislation and misclassification task forces. Understanding that combating misclassification requires a multi-pronged approach, WHD has entered into memoranda of understanding with many of these states, as well as the Internal Revenue Service.¹ In conjunction with these efforts, the Administrator believes that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standards Act (FLSA or "the Act") may be helpful to the regulated community in classifying workers and ultimately in curtailing misclassification.

The FLSA's definition of employ as "to suffer or permit to work" and the later-developed "economic realities" test provide a broader scope of employment than the common law control test. Indeed, although the common law control test was the prevalent test for determining whether an employment relationship existed at the time that the FLSA was enacted, Congress rejected the common law control test in drafting the FLSA. See *Walling v. Portland Terminal Co.*, 330 U.S. 148, 150-51 (1947). Instead, the FLSA defines "employ" broadly as including "to suffer or permit to work," 29 U.S.C. 203(g), which clearly covers more workers as employees, see *U.S. v. Rosenwasser*, 323 U.S. 360, 362-63 (1945).

Other IC Developments: Fact Sheet #13



1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

Other IC Developments: The New Website

dol.gov/agencies/whd/flsa/misclassification

Misclassification of Employees as Independent Contractors

EMPLOYEE	OR	INDEPENDENT CONTRACTOR
 Working for someone else's business		Running their own business
 Paid hourly, salary, or by piece rate		Paid upon completion of project
 Uses employer's materials, tools and equipment		Provides own materials, tools and equipment
 Typically works for one employer		Works with multiple clients
 Continuing relationship with the employer		Temporary relationship until project completed
 Employer decides when and how the work will be performed		Decides when and how they will perform the work
		Decides what work they will do

Myths About Misclassification

Misclassification of employees as independent contractors is a serious problem. Here we dispel some of the pervasive myths about misclassification. Select the images below for information dispelling each myth.



Myth 1: My boss calls me an independent contractor, not an employee. But it really doesn't matter as long as I get paid.



Myth 2: If I am classified as an independent contractor, I am not eligible for unemployment insurance (UI).



Myth 3: I received a 1099 tax form from my employer, and this makes me an independent contractor.

GET THE FACTS ON MISCLASSIFICATION UNDER THE FAIR LABOR STANDARDS ACT Employee or Independent Contractor?

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime pay protections to nearly all workers in the U.S. Some employers incorrectly treat workers who are employees under this federal law as independent contractors. We call that "misclassification." If you are misclassified as an independent contractor, your employer may try to deny you benefits and protections to which you are legally entitled.

Please refer to **Fact Sheet 13** for more information on the factors used to determine whether you're an employee or an independent contractor.

 **WAGE AND HOUR DIVISION**
UNITED STATES DEPARTMENT OF LABOR

1-866-4US-WAGE
dol.gov/whd



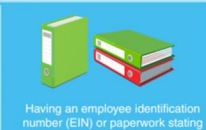
Receiving a 1099 does not make you an independent contractor under the FLSA.



Even if you are an independent contractor under another law (for example, tax law or state law), you may still be an employee under the FLSA.



Signing an independent contractor agreement does not make you an independent contractor under the FLSA.



Having an employee identification number (EIN) or paperwork stating that you are performing services as a Limited Liability Company (LLC) or other business entity does not make you an independent contractor under the FLSA.



EMPLOYEES

Employers may not misclassify an employee for any reason, even if the employee agrees.



You are not an independent contractor under the FLSA merely because you work onsite or from home with some flexibility over work hours.



Whether you are paid by cash or by check, on the books or off, you may still be an employee under the FLSA.



"Common industry practice" is not an excuse to misclassify you under the FLSA.

Tip Credit Regulations

**Dec. 30, 2020 -
Trump Final Rule
(effective 3/1/21)**

**Feb. 26, 2021 -
Effective Date Delayed**

**Oct. 29,, 2021 –
Biden Final Rule
(effective 12/28/21)**

**Jan. 20, 2021 -
Inauguration**

**June 32, 2021 –
Biden Proposed Rule**

Limits on Non-Tipped Work

- Employers can only take a tip credit when employees engaged in tip-producing work or tasks that directly support such work
 - Tip-supporting work limited to 20% of hours worked in a workweek and no more than 30 continuous minutes
 - Tip-supporting work is “work performed by a tipped employee in preparation of or to otherwise assist tip-producing customer service work”
- Refilling salt and pepper shakers and ketchup bottles
 - Rolling silverware
 - Folding napkins
 - Sweeping or vacuuming under tables in the dining area
 - Busing, wiping down and setting tables

Civil Money Penalties

- Final rule published Sept. 24, 2021, and effective Nov. 23, 2021
- Civil money penalties available against employers, managers or supervisors who take tips earned by their employers
- Violations need not be repeat or willful

Willfulness defined

- The employer knew that its conduct was prohibited by the FLSA or showed reckless disregard for the requirements of the FLSA
 - Advice from WHD that conduct was not lawful
 - Failure to adequately inquire into whether the conduct was in compliance with the FLSA

Government Contracting

Increasing the Minimum Wage for Federal Contractors

A Rule by the Labor Department on 11/24/2021

PUBLISHED DOCUMENT

Start Printed Page 67126

AGENCY:
Wage and Hour Division, Department of Labor.

ACTION:
Final rule.

SUMMARY:
This document finalizes regulations to implement an Executive order titled "Increasing the Minimum Wage for Federal Contractors," which was signed by President Joseph R. Biden, Jr. on April 27, 2021. The Executive order states the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The Executive order directs the Secretary to issue regulations by November 24, 2021, consistent with applicable law, to implement the order's requirements. This final rule therefore establishes standards and procedures for implementing and enforcing the minimum wage protections of the Executive order. As required by the order, the final rule incorporates to the extent practicable existing definitions, principles, procedures, remedies, and enforcement processes under the Fair Labor Standards Act of 1938, the Service Contract Act, the Davis-Bacon Act, and the Executive order of February 12, 2014, entitled "Establishing a Minimum Wage for Contractors," as well as the regulations issued to implement that order.

DOCUMENT DETAILS

Printed version:
PDF

Publication Date:
11/24/2021

Agencies:
Department of Labor
Office of the Secretary of Labor

Dates:
Effective date: This final rule is effective on January 30, 2022.

Effective Date:
01/30/2022

Document Type:
Rule

Document Citation:
86 FR 67126

Page:
67126-67236 (111 pages)

CFR:
29 CFR 10
29 CFR 23

RIN:
1235-AA41

Document Number:
2021-25317

DOCUMENT STATISTICS

Page views:
5,976

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210



January 13, 2022

FIELD ASSISTANCE BULLETIN No.: 2022-1

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Jessica Looman
Acting Administrator

SUBJECT: Application of Executive Order 14026, "Increasing the Minimum Wage for Federal Contractors"

This memorandum provides guidance as to the application of Executive Order 14026, "Increasing the Minimum Wage for Federal Contractors" (EO 14026), including how EO 14026 is similar to or different from Executive Order 13658, "Establishing a Minimum Wage for Federal Contractors" (EO 13658).

Background

On February 12, 2014, President Obama signed EO 13658, which requires contractors to pay at least the established minimum wage to workers performing work on or in connection with certain covered federal contracts for construction or services. EO 13658 established an initial minimum wage of \$10.10 and provided that the Secretary would increase the applicable minimum wage rate annually based on inflation. The current EO 13658 minimum wage rate is \$10.95 (\$7.65 for tipped workers) and will increase to \$11.25 (\$7.90 for tipped workers) on January 1, 2022.

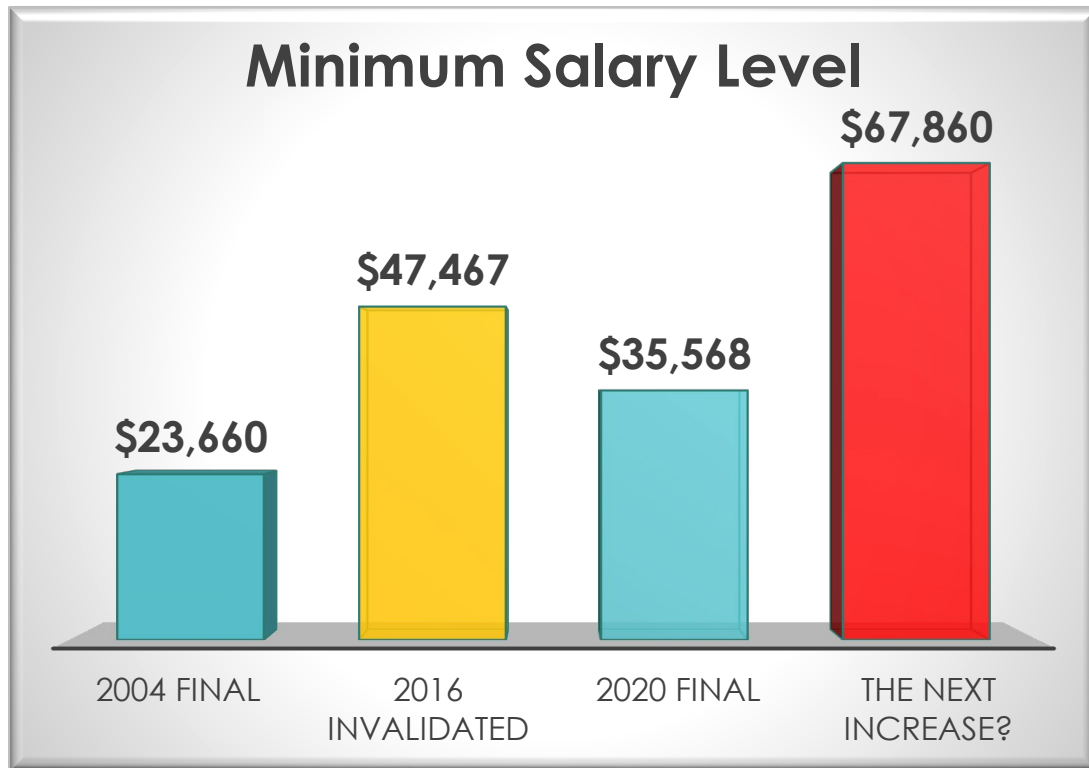
On April 27, 2021, President Biden signed EO 14026, which raises the hourly minimum wage for workers performing work on or in connection with certain covered federal contracts for construction or services. EO 14026 establishes an initial minimum wage of \$15.00 (\$10.50 for tipped workers) as of January 30, 2022, which the Secretary will also increase annually based on inflation. EO 14026 shares many similarities with EO 13658 but does have some key differences relating to coverage and applicability, as discussed below. The Department published a final rule in the Federal Register to implement the provisions of EO 14026 on November 24, 2021. These regulations are found at 29 CFR Part 23 and become effective on January 30, 2022.

Contract Coverage

Contracts or Contract-Like Instruments

Under both EO 13658 and EO 14026, *contract or contract-like instrument* is broadly defined to include any agreement between two or more parties creating obligations that are enforceable or otherwise recognizable under the law. Although the term includes any contract within the

Overtime



Projected Minimum Salary Under the Obama Standard

2021	\$51,053
2022	\$51,053
2023	\$55,055
2024	\$55,055

Quick Survey

What wage-hour compliance issue is most likely to keep you up at night?

- A. Joint Employment
- B. Independent Contracting
- C. Tipped Employees
- D. Civil Money Penalties
- E. Government Contracting/Davis-Bacon
- F. Overtime

Informal Guidance

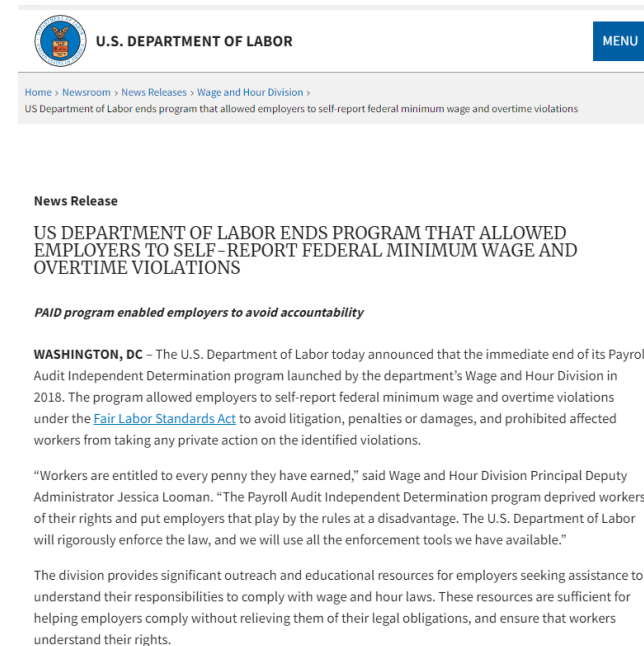
Compliance **HR**

2021 Policy Changes & Informal Guidance

Opinion Letters - Gone

- Three opinion letters issued in the last week of the Trump administration withdrawn
- No formal statement that DOL will no longer issue opinions letters, but no new opinion letters issued

The PAID Program - Gone



The screenshot shows the top of a news release page from the U.S. Department of Labor. The header includes the DOL logo, the text 'U.S. DEPARTMENT OF LABOR', and a 'MENU' button. Below the header is a breadcrumb trail: 'Home > Newsroom > News Releases > Wage and Hour Division > US Department of Labor ends program that allowed employers to self-report federal minimum wage and overtime violations'. The main content area is titled 'News Release' and contains the following text:

US DEPARTMENT OF LABOR ENDS PROGRAM THAT ALLOWED EMPLOYERS TO SELF-REPORT FEDERAL MINIMUM WAGE AND OVERTIME VIOLATIONS

PAID program enabled employers to avoid accountability

WASHINGTON, DC – The U.S. Department of Labor today announced that the immediate end of its Payroll Audit Independent Determination program launched by the department’s Wage and Hour Division in 2018. The program allowed employers to self-report federal minimum wage and overtime violations under the [Fair Labor Standards Act](#) to avoid litigation, penalties or damages, and prohibited affected workers from taking any private action on the identified violations.

“Workers are entitled to every penny they have earned,” said Wage and Hour Division Principal Deputy Administrator Jessica Looman. “The Payroll Audit Independent Determination program deprived workers of their rights and put employers that play by the rules at a disadvantage. The U.S. Department of Labor will rigorously enforce the law, and we will use all the enforcement tools we have available.”

The division provides significant outreach and educational resources for employers seeking assistance to understand their responsibilities to comply with wage and hour laws. These resources are sufficient for helping employers comply without relieving them of their legal obligations, and ensure that workers understand their rights.

2021 Policy Changes & Informal Guidance

We Hear You: How We're Addressing Feedback

Filed in [Wage and Hour Issues](#) • By: [Jessica Looman](#) • January 19, 2022

In the past year, the Wage and Hour Division has held more than 70 listening sessions and met with people representing workers and employers in many industries to identify ways we can improve access to the worker protections and services we provide. [Learn more about our plans to address these priorities in 2022.](#)

Here are some of the things we've learned:

Compliance Assistance – Gone?

- Workers need to know they can come to us for help
- We need to do more to let workers know they are protected from retaliation
- Reach workers to dispel the myths about IC misclassification
- Identify more opportunities to collaborate and connect to workers and influential community members

www.dol.gov/agencies/whd/contact/local-offices

2021 Policy Changes & Informal Guidance

Arbitration Agreements are Out

News Release

COURT AFFIRMS US DEPARTMENT OF LABOR'S INDEPENDENT AUTHORITY TO RECOVER UNPAID WAGES, DAMAGES IN COURT FOR EMPLOYEES WHO SIGNED PRIVATE ARBITRATION AGREEMENTS

Judge rules that US Secretary of Labor not bound by third-party agreements

NEW YORK – A federal judge in New York has ruled private arbitration agreements do not bind the Secretary when the U.S. Secretary of Labor is not a party. The decision now allows the U.S. Department of Labor to move forward with its lawsuit alleging that three defendants misclassified their employees as independent contractors to evade the overtime and recordkeeping requirements of the [Fair Labor Standards Act](#).

Liquidated Damages are In

Liquidated Damages in Settlements in Lieu of Litigation

Filed in Wage and Hour Issues • By: Jessica Looman • April 9, 2021



The Wage and Hour Division of the U.S. Department of Labor is responsible for ensuring that over 148 million workers across the country are getting paid for the work they do every day to keep our economy moving forward. Enforcing the minimum wage and making sure workers get time and a half after 40 hours a week are fundamental protections provided under the Fair Labor Standards Act. When a worker doesn't get paid, it hurts them, their families, and the community. That's not fair and that's not right.

That's why, under the Fair Labor Standards Act, employers who violate minimum wage, overtime and protections for employees who receive tips are liable for the unpaid wages or unlawfully kept tips and for an additional equal amount in liquidated damages.

Prior to June 2020, the U.S. Department of Labor's Wage and Hour Division, working with the department's Solicitor's Office, had successfully leveraged pre-litigation liquidated damages in the settlement of cases in lieu of litigation, with impactful results. From fiscal year 2016 through fiscal year 2020, the division assessed more than \$200 million dollars in liquidated damages for approximately 250,000 affected workers. However, in June 2020, the department paused the use of this enforcement tool.

Effective April 9, 2021, the Wage and Hour Division will return to pursuing pre-litigation liquidated damages and leveraging this enforcement tool where appropriate.

Enforcement

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Enforcement 2021



\$234.2 million in back wages collected for 193,349 employees in FY 2021

- FY 2020: \$257.8 million for 229,934 employees
- FY 2019: \$322.4 million for 313,941 employees
- FY 2018: \$304.9 million for 265,027 employees
- FY 2017 \$270.4 million for 240,608 employees

Administrator Weil's best year: \$265.5 million in 2016.

Enforcement 2022

So Why Should I Care?

- More investigators
- More double liquidated damages
- More civil money penalties
- More litigation
- More difficult to settle

News Release

US DEPARTMENT OF LABOR ANNOUNCES PLANS TO HIRE 100 INVESTIGATORS TO SUPPORT ITS WAGE AND HOUR DIVISION'S COMPLIANCE EFFORTS

Division seeks to build out enforcement team nationwide

WASHINGTON – The U.S. Department of Labor today announced that its Wage and Hour Division is seeking to add 100 investigators to its team to support its enforcement efforts including the protection of workers' wages, migrant and seasonal workers, rights to family and medical leave and prevailing wage requirements for workers on federal contracts.

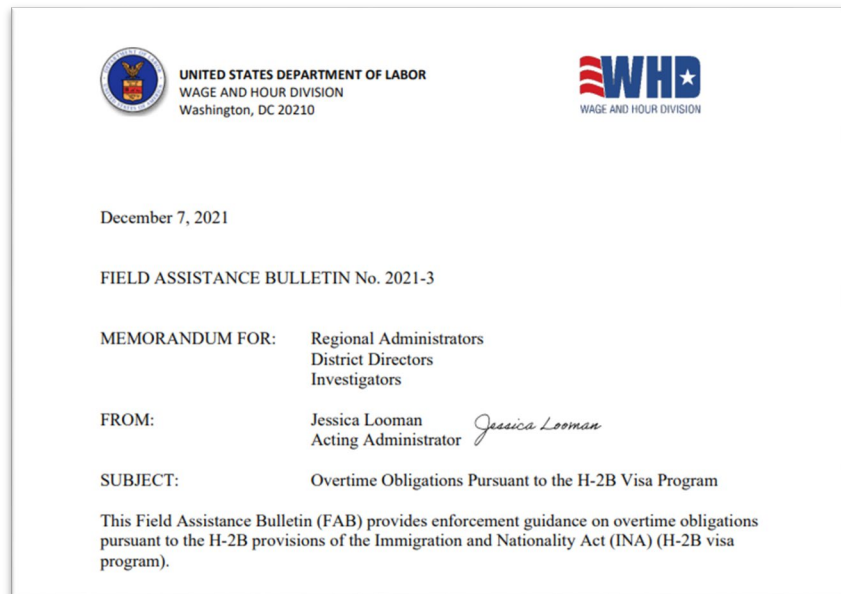
The Wage and Hour Division is one of the nation's most essential labor law enforcement agencies, responsible for enforcing some of the most comprehensive labor laws affecting more than 148 million workers. The cornerstone of its enforcement team, investigators' responsibilities include the following:

- Conducting investigations to determine if employers are paying workers and affording them their rights as the law requires.
- Helping ensure that law-abiding employers are not undercut by employers who violate the law.
- Promoting compliance through outreach and public education initiatives.
- Supporting efforts to combat worker retaliation and worker misclassification as independent contractors.

"Adding 100 investigators to our team is an important step in the right direction," said Acting Wage and Hour Administrator Jessica Looman. "We anticipate significantly more hiring activity later in fiscal year 2022. While appropriations will determine our course of action, we are optimistic we will be able to bring new talented professionals onboard to expand our diverse team."

H-2B Enforcement

FAB 2021-3 (Dec. 7, 2021)



- H2-B job order must indicate expected OT hours
- Because OT is on the job order, any FLSA violation is also an H2-B violation
- Failing to offer OT to citizens first is an H2-B violation
- Violation penalties
 - FLSA max = \$2,074
 - H2-B max = \$13,072

Investigation of the Year: 91,500 Oily Pennies



A Georgia man waiting on a final paycheck from his old job says his money arrived in the form of 90,000 greasy pennies dumped in his driveway. *SCREENSHOT FROM WGCL-TV*

News Release

US DEPARTMENT OF LABOR SUES GEORGIA AUTO REPAIR SHOP OWNER WHO PAID FORMER WORKER FINAL WAGES IN OILY PENNIES

A OK Walker Autoworks violated retaliation prohibition, overtime laws

ATLANTA – The U.S. Department of Labor has filed a complaint in the U.S. District Court for the Northern District of Georgia, against a Peachtree City auto repair shop and its owner seeking \$36,971 in back wages and liquidated damages after investigators found they violated the [retaliation](#), overtime and recordkeeping prohibitions of the [Fair Labor Standards Act](#).

The department's [Wage and Hour Division](#) determined that Miles Walker, the owner of 811 Autoworks LLC – operating as A OK Walker Autoworks – retaliated against one employee who contacted the agency after he resigned and the employer failed to pay his final wages.

The department's complaint alleges that Walker paid the former employee's final wages of \$915 by delivering about 91,500 oil-covered pennies and a pay stub marked with an expletive to the worker's home – blocking and staining his driveway and requiring nearly seven hours for him to remove – as well as publishing defamatory statements about the former employee on the company's website.

The division also determined that Walker violated the FLSA's overtime provisions by paying other employees straight time for all hours worked, failing to pay legally required overtime rate when they worked over 40 hours in a workweek. In addition, the defendant also failed to keep adequate and accurate records of employees' pay rates and work hours. The department seeks to enjoin the defendant permanently from future FLSA retaliation, overtime and recordkeeping violations.

Wage & Hour ABCs

Always Be Complying

Compliance Issues









- Are your workers correctly classified as employees?
- What are the risks of joint employment?
- Are your employees correctly classified as exempt from overtime requirements?
- Do you pay your workers for all hours they work?
- Are you included all wages in the overtime calculation?

A Compliance Program

- Wage and hour policies
- Regular audits
- Training for employees and managers
- Employee complaint process

How Can ComplianceHR Help?

- PolicySmart
- Rapid Reference Apps
- Independent Contractor
- Overtime
- COVID-19 apps

<p>ComplianceHR SmartScreen</p> <p> COVID-19 Screening Efficiently screens your employees and tracks results as they return to work, while helping you ensure privacy and 50-state compliance.</p> <p>+ Manage Employees 🔍 Track Results</p>	<p>COVID-19 Resource Center</p> <p> COVID-19 Resource Center Quickly delivers answers to the most pressing employment-related COVID-19 topics such as health and safety, leaves of absence and more.</p> <p>🔍 Use FAQ Rapid Reference 🔍 View Resource Documents</p>	<p>PolicySmart</p> <p> Be Confident. Stay Compliant. PolicySmart's simple templates and checklists make it easy to create and maintain your policies. Ensure you never miss an update with our intuitive news and notifications about regulatory changes.</p> <p>🔍 View Policy Documents 🔍 View Policy News ⚙️ Configure Jurisdictions</p>
<p>Navigator IC</p> <p> Independent Contractor Assessment Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws</p> <p>+ Create New Evaluation 🔍 View Evaluations ▶ IC Agreement</p>	<p>Navigator OT</p> <p> Exempt Status Assessment Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards</p> <p>+ Create New Review 🔍 View Reviews 🔍 View Evaluations</p>	<p>Navigator Leave</p> <p> Leave Compliance Generates state and federal compliant forms, and quickly delivers federal and state-specific leave requirements (and paid sick leave or "PSL") through Rapid Reference tools.</p> <p>+ Create New Form 🔍 View Forms ▶ Use PSL Rapid Reference ▶ Use Rapid Reference</p>
<p>Navigator Pay Practices</p> <p> Wage and Hour Compliance Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues</p> <p>▶ Find Minimum Wage ▶ Use Rapid Reference</p>	<p>Navigator Onboarding</p> <p> Onboarding Document Production Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents</p> <p>+ Create New Document</p>	

What's your biggest compliance challenge?

- Creating and maintain an up-to-date and legally compliant employee handbook
- Mitigating your risk of independent contractor misclassification
- Quickly and compliantly determining whether an employee is exempt or non-exempt
- Easily screening employees for COVID-19-related symptoms and track recent testing outcome and vaccination status.

Questions?

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