

Risk Control

Independent Contractor or employee

Most workers are employees under the Federal Fair Labor Standards Act (FLSA), the Department of Labor (DOL) examines six factors of the so-called economic realities test. According to the DOL, the economic realities test is applied to determine whether a worker is economically dependent on a business to which the worker provides services—and is therefore an employee—or an economically independent worker operating their own business—and therefore properly classified as an independent contractor.

There is strong emphasis on the first three of the following six factors:

- Whether the work is an integral part of the business
- Whether the worker's managerial skill affects his or her opportunity for profit and loss
- The relative investments of the business and worker
- Whether the work performed requires special skills and initiative
- Whether the relationship between the worker and the business is permanent or indefinite
- The nature and degree of the business' control over the worker

The DOL views the degree of control the business has over the worker. When considering control alongside the other factors, the DOL advises that the mere opportunity for control is not a compelling factor for classifying a worker as an independent contractor. The DOL also indicates it will be skeptical of purported independent contractor relationships where the worker continuously or repeatedly works for one business, even if the worker has the option to work for other businesses.