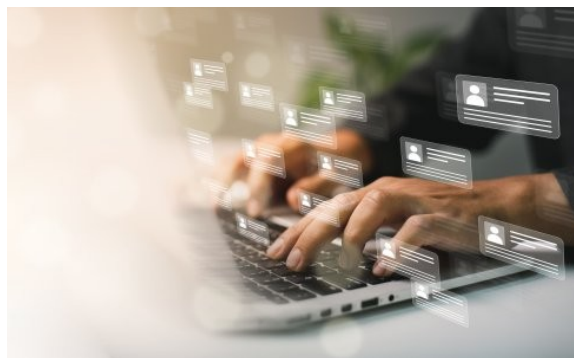


How to Use Contractors and Gig Workers Safely: Navigating DOL Classification Standards in a Changing Enforcement Climate



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The use of independent contractors and gig workers remains an attractive and, in many industries, essential component of modern workforce strategy. Flexibility, cost control, and scalability continue to drive businesses toward non-employee labor models.

At the same time, the legal framework governing worker classification has become more exacting, more nuanced, and more actively enforced. Misclassification is no longer a technical compliance issue. It is a material risk with significant financial and reputational consequences.

Understanding how to engage contractors safely requires more than a surface-level application of outdated tests. It requires a disciplined, fact-specific analysis grounded in current U.S. Department of Labor standards and enforcement priorities.

The DOL's Economic Reality Test: Substance Over Form

The governing framework under the Fair Labor Standards Act is the economic reality test, as refined by recent Department of Labor rulemaking. The inquiry is not determined by contractual labels or the parties' stated intentions. It turns on whether, as a matter of economic reality, the worker is dependent on the business or is operating an independent enterprise.

While the analysis remains holistic, several core factors consistently guide the determination.

The degree of control exercised by the company is often central. Where a business dictates how, when, and where work is performed, classification as an independent contractor becomes increasingly difficult to sustain.

Equally significant is the worker's opportunity for profit or loss based on managerial skill. Independent contractors typically can increase earnings through initiative, investment, or business judgment. Workers paid on a fixed or standardized basis, without meaningful entrepreneurial discretion, present heightened risk.

The permanence of the relationship also carries weight. Open-ended or indefinite engagements resemble traditional employment relationships, particularly where the worker is integrated into ongoing operations.

Investment in tools and resources, the degree of skill required, and whether the work is integral to the business's core function all further inform the analysis.

No single factor is dispositive. However, in practice, patterns emerge. Where multiple factors point toward economic dependence, the likelihood of misclassification findings increases substantially.

Why Misclassification Risk Is Rising

Recent enforcement trends reflect a clear and consistent priority. Federal and state agencies are increasingly aligned in scrutinizing contractor arrangements, and plaintiffs' counsel continue to leverage classification issues as a gateway to broader wage-and-hour claims.

Misclassification rarely exists in isolation. It often gives rise to allegations involving unpaid overtime, minimum wage violations, failure to provide benefits, and tax exposure. In collective or class contexts, liability can scale rapidly.

In addition, state law frameworks, including ABC-style tests in certain jurisdictions, impose stricter standards than federal law. A classification that may be defensible under federal guidance can nonetheless fail under applicable state requirements.

This layered regulatory environment requires a coordinated approach. A one-size-fits-all model is no longer viable for employers operating across multiple jurisdictions.

Common Missteps That Create Exposure

A recurring issue in contractor engagements is the reliance on form over function.

Well-drafted independent contractor agreements, standing alone, do not establish compliance. Agencies and courts consistently look beyond contractual language to the realities of the working relationship.

Similarly, classification decisions driven by business preference rather than legal analysis create significant exposure. The fact that a contractor model is operationally convenient, or industry common does not insulate it from challenge.

Another frequent concern arises where contractors are treated, in practice, like employees. Requiring adherence to internal policies designed for employees, imposing rigid schedules, or integrating contractors into core teams without distinction undermines the independence necessary to support proper classification.

Finally, the use of long-term, exclusive contractor relationships presents elevated risk, particularly where the individual does not meaningfully market services to other clients.

Practical Strategies for Structuring Compliant Relationships

Mitigating classification risk requires alignment between documentation and day-to-day operations.

Engagements should be structured to reflect genuine independence. This includes defining project-based scopes of work, preserving contractor discretion in how services are performed, and avoiding unnecessary control over scheduling or methods.

Compensation models should, where appropriate, allow for variation based on performance, efficiency, or business judgment, rather than mirroring employee wage structures.

Businesses should also evaluate whether contractors are making meaningful investments in their own operations, including tools, equipment, or business infrastructure.

Regular audits are essential. Classification determinations made at the outset of a relationship may become outdated as the engagement evolves. Periodic review allows employers to identify and address risks before they mature into liabilities.

Importantly, compliance strategies must account for both federal and state standards. Where stricter state tests apply, those

frameworks should govern the analysis.

The Strategic Imperative

The continued expansion of the gig economy ensures that contractor relationships will remain a focal point of regulatory and litigation activity.

Employers who approach classification as a static, check-the-box exercise are increasingly vulnerable. Those who treat it as an ongoing, strategic consideration are better positioned to manage risk effectively.

The distinction between an employee and an independent contractor is, at its core, a legal conclusion drawn from operational realities. Aligning those realities with governing standards requires careful planning and informed judgment.

For organizations seeking to preserve flexibility while minimizing exposure, experienced counsel is not simply beneficial; it is essential.

Proactive structuring, informed by current enforcement priorities, remains the most reliable way to avoid costly disputes and to ensure that workforce models withstand scrutiny when it matters most.