



Independent Contractor Misclassification: If it can Happen to Kanye, it can Happen to You

Kanye's Problem (as it relates to this matter)

[Kanye West](#) is being sued by a former Yeezy employee who alleges that Kanye failed to pay her for work she was required to do off-the-clock, and other wage and hour violations. Kanye's wage and hour problems seem to arise from the fact that he misclassified employees (subject to wage and hour laws) as independent contractors. Taliah Leslie claims that Yeezy regularly misclassified employees as independent contractors despite their responsibilities as full-time company employees. Such a misclassification allegedly deprived these workers of wages and other benefits. Additionally, Leslie says Yeezy failed to keep accurate payroll records of the total hours these "employees" worked.

Now More Difficult to Establish Workers as Independent Contractors Under Biden Administration

Misclassification of employees as independent contractors has long been a problem for employers and it is about to get worse. The U.S. Department of Labor (DOL) is officially withdrawing the Trump administration's independent-contractor rule, which would have made it easier for businesses to classify workers as independent contractors rather than employees. President Biden's DOL has indicated that it believes the Trump Administration rule is inconsistent with the FLSA's text and purpose.

The DOL has traditionally analyzed the totality of the circumstances when considering whether a worker is an independent contractor or employee. The withdrawn rule would have applied a more-limited economic-reality test to determine whether workers are independent contractors or employees. The Trump rule would have primarily considered the following factors:

- The nature and degree of control over the work.
- The worker's opportunity for profit or loss based on initiative and investment.

Three other factors would have served as less important "guideposts" in determining employee status:

- The amount of skill required for the work.
- The degree of permanence of the working relationship between the worker and the potential employer.

- Whether the work is part of an integrated unit of production (or the individual works under circumstances analogous to a production line).

Although the DOL does not plan to issue a new rule any time soon, President Biden has said he supports an "ABC" test to determine if a worker is an employee or an independent contractor. Generally, under the ABC test the following three factors must all be met for a worker to be properly classified as an independent contractor:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work.
- The worker performs tasks that are outside the usual course of the hiring entity's business.
- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

The ABC test presumes an individual is an employee unless the company can demonstrate all three of these factors.

If an employee is improperly classified as an independent contractor, the employer likely will not have kept close track of the employee's work hours. Further, the employer may not be paying time and a half for all hours worked in excess of 40 in a given work week. Thus, the employer, like Kanye, will be facing a claim for wages, liquidated damages and attorney's fees. Given that the DOL will now be more inclined to find that workers are employees rather than independent contractors, employers must either be able to solidly establish a worker's independent contractor status or comply with employee wage and hour laws.

For more information, please contact [Tony Stergio](#).