



Proposed New Rule Could Strip Independence from Independent Contractors



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Gene Marks:

Hey, everybody, this Gene Marks and welcome to this week's edition of "On the Mark", where I take a bit of news that's going on in the world and I interpret it as to how it affects your small business. And we do have some news this week. It has to do with independent contractors. According to many sources, a new U.S. Department of Labor proposed rule on which workers are considered to be independent contractors is expected to come out pretty soon.

The Department of Labor submitted some changes to the White House on July 5, so it is nearing completion. The rulemaking is the Biden administration's second attempt to revise how it interprets whether workers should be classified as independent contractors or employees that are protected by the Fair Labor Standards Act. There were public forums that were just held at the end of June, both for employers and employees to give their thoughts on independent contractor classification.

And this rule really does matter. Right now, under the Fair Labor standards Act, employees are entitled to things like minimum wage and overtime pay and other benefits. Independent contractors, as you know, are not entitled to those kinds of benefits. But, you know, they generally have more flexibility to set their own schedules and work for multiple companies.

Under the Trump administration, there were rules that were in effect that made it easier for employers to classify workers as independent contractors rather than employees, and the Biden administration is looking to potentially change those rules.

Now, this is not a conversation of the details of these rules, but I do want to give you some thoughts on this, because it really impacts a lot of small businesses, including my own. For example, I've got about 10 employees in my business, but I also have about a dozen contractors, independent contractors, and quite potentially some of those independent contractors that are treated as independents, I may need to treat them as employees under this potential new change to the independent contractor rules from the Department of Labor.

So, how does it affect you? Well, again, the details are still not public yet, but some of them are coming out and just be aware that the change in the definition of an independent contractor is going to be based on what we're seeing in California right now under their AB 5 legislation. There are going to be three factors of which one is most important to you, and it's this; If you are using independent contractors in your business and they are a vital part to the revenue of your business, there is a chance that you will have to classify them as employees.

So, take me for example, I have my dozen independent contractors I use them for special projects. So, I might hire a developer and pay them \$50 an hour and then turn around and bill my client \$100 an hour for their work. Well, that contractor is generating revenue for me, and that's why its potential under these new rules, I would have to classify that contractor as an employee.

So, if you're in a business where you're using contractors to provide services for your clients, maybe you're billing them out, maybe they're providing trucking services or transportation services, maybe they're doing special types of quality assurance. They might have to be classified as employees under your business.

The idea is that if you have an independent contractor, they should be being used in non-revenue type of activities like a marketing person or an accounting person or somebody that's cleaning your office, for example. That's fine. But, if you've got independent contractors that you're using to generate revenue, they may fall into question.

So, this rule is right now sitting in the White House, which is reviewing it. There is going to be some announcement on that imminently. I expect something like this to happen during the year or before the year ends. I also expect that the rule will be challenged in the courts. So, that will have to be seen because there are a lot of freelancers and independent organizations that don't want to be considered to be employees. They want their independence so they can work for a bunch of other companies and feel free to, you know, to charge whatever that they want and be their own entrepreneurs.

So, as much as the Biden administration is trying to look out for, you know, workers' rights, there are a number of people that are independents and don't want those rights. They want to be their own entrepreneurs.

So, there's expected to be a battle over this. I expect to see that over the course of the year. But you should be aware as a business owner that these rules are potentially changing. Those are going to be coming. There will be more information about this in the weeks to come. I will certainly be keeping you up to date and Paychex, I'm sure, will be issuing their own information bulletins and updating their clients and community about these changes in the rules.

So, independent contractor rules. There's 1099 employees. Those are going to be changing soon. So, keep an eye out.

Hope this information is helpful. My name is Gene Marks. You'll be listening to the weekly "On the Mark" podcast. If you have any ideas or suggestions or things you would like — a guest maybe that you would like to recommend — please visit us at our website at payx.me/thrivetopics. That's P-A-Y-X dot M-E/thrivetopics.

In the meantime, hope you found this information helpful. We look forward to seeing you again with some more news that will impact your small business next week. Take care.

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