

April 28, 2026

Submitted via the Federal eRulemaking Portal at [Regulations.gov](https://www.regulations.gov)

Daniel Navarrete, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1235-AA46; Comments of the Center for Workplace Compliance on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act; Notice of Proposed Rulemaking

Dear Mr. Navarrete:

The Center for Workplace Compliance (CWC) welcomes the opportunity to submit comments in response to the Department of Labor's (the Department's) *Notice of Proposed Rulemaking on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act*, published in the *Federal Register* on February 27, 2026.¹

As explained below, the proposal is consistent with the economic reality test that has been applied for decades by both federal appellate courts and the Department. The proposal also makes targeted refinements that reduce redundancy and sharpen the multifactor analysis, promoting more consistent and administrable application while preserving the test's holistic nature. For these reasons, CWC strongly supports the proposal.

Statement of Interest

Founded in 1976, CWC² is the nation's leading nonprofit association of employers dedicated exclusively to helping members understand and manage workplace compliance requirements and risk. CWC's membership includes U.S. employers from nearly every major industry sector and geographic region.

¹ 91 Fed. Reg. 9,932 (February 27, 2026).

² Formerly the Equal Employment Advisory Council (EEAC).

All CWC members are employers subject to the Fair Labor Standards Act and Family and Medical Leave Act; a minority are agricultural employers subject to the Migrant and Seasonal Agricultural Worker Protection Act. As such, CWC's members have a strong interest in regulations that are faithful to the statutory text, clear to the regulated community, and attentive to the practical challenges of prospective compliance.

Executive Summary

CWC strongly supports the proposal to revise its employee or independent contractor guidance by returning, with modifications, to the framework adopted in 2021. For employers trying to classify workers prospectively and in good faith, the proposal would:

- Provide clearer, more predictable guidance for practical, forward-looking classification.
- Better align the analysis with longstanding Supreme Court precedent and how courts assess economic dependence.
- Reduce unnecessary redundancy and ambiguity in the multifactor analysis, thereby supporting more consistent outcomes.
- Reaffirm that actual employment practices—rather than labels or theoretical possibilities—should govern worker classifications.
- Promote a uniform framework across the FLSA, FMLA, and MSPA, reducing unnecessary compliance burdens.

As explained below, the proposal addresses longstanding challenges in applying the economic reality test by pairing the established legal framework with practical guidance. It preserves a holistic inquiry grounded in economic dependence for work, while adding structure that promotes prospective compliance, supports consistent adjudication, and enhances administrability across the FLSA, FMLA, and MSPA.

Revised Guidance Is Needed to Promote Consistent and Predictable Application of the Economic Reality Test

CWC supports the Department's decision to engage in rulemaking to revise its employee-independent contractor interpretations. The current framework, adopted in 2024, has not provided sufficiently clear guidance to support consistent, good-faith prospective classification decisions.

Courts have long applied a totality-of-the-circumstances analysis when determining employee status under the FLSA. That approach is well suited to adjudication

after the fact, where courts benefit from fully developed evidentiary records and can assess how working relationships actually functioned in practice. Employers, by contrast, must make classification decisions prospectively, based on anticipated working arrangements and reasonable, good-faith assessments of how work will be performed rather than litigated records. In that context, unguided multifactor balancing, while arguably appropriate for adjudication, does not always translate readily to prospective compliance decision-making.

The Department's proposal appropriately responds to this challenge by restoring a more workable structure while remaining faithful to Supreme Court precedent and longstanding judicial use of economic dependence for work as the touchstone of FLSA coverage. It does not abandon holistic review or constrain judicial discretion. Instead, it refines the framework to reduce redundancy, focus the analysis on the most probative considerations, and improve predictability for real-world application.

Clear Departmental guidance also matters beyond compliance. Courts routinely look to the Department's interpretations when evaluating worker-classification disputes,³ particularly where existing case law does not squarely address a given factual scenario. Well-structured guidance therefore supports more consistent adjudication as well as more effective prospective compliance.

For these reasons, CWC strongly supports the proposal and believes it will meaningfully improve predictability, administrability, and compliance outcomes. We offer the following comments on specific provisions of the proposal.

Introductory Statement (Proposed § 795.100)

CWC supports proposed § 795.100 that explains the purpose and scope of part 795 and states that the Department's interpretations may be relied upon consistent with the Portal-to-Portal Act. Codifying this guidance through notice-and-comment rulemaking promotes transparency and enhances consistent application by courts and regulated parties.

³ Indeed, while only in effect a comparatively short time, several courts have cited the 2024 interpretations. See, e.g., *Cervantes v. CRST Int'l, Inc.*, 2025 U.S. Dist. LEXIS 150727, *46 (N.D. Iowa 2025); *Hodge v. White*, 2025 U.S. Dist. LEXIS 132300, *4 (W.D. Tenn. 2025); *Hottenstein v. Single Source Transp. of Hartford, LLC*, 2024 U.S. Dist. LEXIS 198804, *9-20 (E.D. Wis. 2024).

Independent Contractors Are Not Employees Under the FLSA (Proposed § 795.105(a))

The proposal would revise § 795.105(a) to state that independent contractors are not employees under the FLSA and that the Act's minimum wage, overtime, and recordkeeping requirements therefore do not apply to individuals properly classified as independent contractors. Although this principle is well established, the proposal articulates it more clearly and directly than the 2024 rule. CWC supports the decision to return to the 2021 formulation.

Economic Dependence as the Ultimate Inquiry (Proposed § 795.105(b))

CWC supports the Department's reaffirmation that economic dependence for work, rather than economic dependence for income, remains the touchstone for determining whether an individual is an employee or an independent contractor under the FLSA. This focus is firmly grounded in precedent⁴ and provides a coherent organizing principle for evaluating a wide range of modern working arrangements.

As explained in the proposal's preamble, the economic reality test does not ask whether individuals depend on their work for income or livelihood; it asks whether they are economically dependent on a particular employer—or instead operate an independent business—when performing the work at issue. Conflating economic dependence with broader notions of financial security or income necessity risks obscuring the statutory inquiry and introducing considerations contrary to established court precedent.

The proposal appropriately maintains this longstanding distinction while clarifying its application. By focusing the inquiry on whether the worker is in business for himself or herself with respect to the work performed, the proposal reinforces a principle that courts have repeatedly emphasized, even as they have articulated the economic reality test in varying ways. With the inquiry framed this way, the analysis remains faithful to precedent while providing clearer direction to regulated parties and courts alike.

Determining Economic Dependence (Proposed § 795.105(c))

CWC supports proposed § 795.105(c), which explains that employee/independent contractor status under the FLSA is based on the totality of the circumstances and that no single factor is dispositive.

CWC also supports the clarification that the enumerated factors are non-exhaustive and must be evaluated in light of the economic dependence inquiry described in §

⁴ This precedent is summarized in the preamble to the NPRM at 91 Fed. Reg. 9,932-34 and 9,946.

795.105(b). This emphasis on holistic review preserves longstanding doctrine while providing a clearer analytic framework for applying the economic reality test consistently in practice.

As discussed below, the core-factors approach enhances predictability and administrability while preserving consideration of all relevant facts.

Economic Reality Factors—Core Factors (Proposed § 795.105(d)(1))

Core Factors Improve Predictability While Preserving Holistic Review

Designating control and opportunity for profit or loss as core factors provides meaningful guidance in circumstances where different indicia cut in different directions. In the absence of such guidance, employers, workers, and courts are left to reconcile competing considerations without a clear methodology, which can lead to inconsistent outcomes across similar fact patterns.

The proposed approach preserves holistic review by expressly retaining non-core factors and allowing consideration of all relevant circumstances. At the same time, it offers a principled basis for assessing relative probative value when factors conflict. Where the core factors align, the framework appropriately recognizes that they are strong indicators of economic independence or dependence, while still allowing for atypical cases in which other considerations may warrant a different conclusion.

Nature and Degree of Control

CWC supports treating the nature and degree of control as a core factor. As the proposal explains, this inquiry appropriately focuses on meaningful control actually exercised, rather than theoretical or unused contractual authority. CWC also supports the clarification that ordinary business-to-business terms—such as compliance with legal obligations, safety requirements, insurance, quality standards, or deadlines—should not be treated as dispositive indicators of an employment relationship.

Opportunity for Profit or Loss

CWC likewise supports using opportunity for profit or loss as a core factor. The proposal correctly distinguishes between entrepreneurial opportunity driven by managerial skill, initiative, and business decisions, and changes in earnings that depend primarily on working more hours or working faster. This distinction aligns directly with the economic dependence inquiry and helps distinguish workers who are in business for themselves from those who depend on another entity for work.

Core Factors Reduce Redundancy and Promote Analytic Discipline

The Department correctly observes that many traditional economic reality factors overlap conceptually. Identifying core factors does not eliminate overlap altogether, but it helps organize the inquiry and reduces the risk that the same consideration is double-counted or weighed inconsistently. By clarifying which considerations are most probative, the proposal promotes a more disciplined, transparent, and reviewable application of the economic reality test.

Economic Reality Factors—Other Factors (Proposed §795.105(d)(2))

CWC supports the proposed treatment of the remaining economic reality factors—such as skill, permanence of the working relationship, and integration into the putative employer’s operations—as relevant but non-core considerations. The proposal neither discards these factors nor downplays their continued importance. Instead, it clarifies their proper role in an analysis focused on economic dependence for work, while allowing consideration of additional factors where appropriate.

The proposal appropriately recognizes that these factors are often highly context-dependent and generally less probative than the core factors. At the same time, they remain available to address atypical circumstances in which they may carry greater significance. This clarification helps avoid categorical or mechanical outcomes and reduces the risk that secondary considerations eclipse more direct indicators of economic independence or dependence.

This approach preserves flexibility while providing clearer, more usable guidance for courts and regulated parties.

Primacy of Actual Practice (Proposed § 795.110)

CWC supports proposed § 795.110, which emphasizes that actual practice is more probative than contractual labels or theoretical possibilities. This approach is deeply rooted in economic reality jurisprudence and helps ensure that classification determinations reflect real-world working relationships rather than formalities. Reaffirming this principle improves predictability and supports fair, fact-based application of the test.

Illustrative Examples (Proposed § 795.115)

CWC supports including illustrative examples in § 795.115. Because classification determinations are inherently fact-specific, examples significantly improve the usability of

Mr. Daniel Navarrete

April 28, 2026

Page 7 of 7

the guidance by demonstrating how the Department expects the framework to operate in common scenarios, which is particularly valuable for prospective, good-faith compliance.

Application to the FMLA and MSPA (Proposed Amendments to Parts 500 & 825)

Finally, CWC supports application of the same economic reality framework to the FMLA and MSPA, both of which use the FLSA's definition of employment. Applying a uniform framework across these statutes will reduce confusion, improve administrability, and promote more consistent enforcement and adjudication.

Conclusion

CWC is pleased to submit these comments and welcomes continued engagement with the Department on worker classification issues.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Grace Genereaux".

Grace Genereaux
Counsel