Employee Classifications

Take a look at how work is actually performed

by: Greg Goldberg, BTA General Counsel

When it comes to assessing legal risk, business owners in the dealer channel may feel like there is danger lurking around every corner. Nevertheless, while it is important to develop appropriate systems and documentation to help manage risk, an owner's time is best spent charting a path forward, not watching the business's back. One area that deserves special attention, however, is employee classification.

Sales representatives work on commission, technicians travel from site to site, and managed IT providers often rely on a network of specialists who appear, solve a problem and vanish to the next service call. In the best-case scenario, the arrangement feels dynamic, modern and efficient — even inevitable. But in Washington, the question of who is truly an independent contractor and who is an employee is again under review, and the answer may prove less flexible than many in the industry would like.

On Feb. 26, 2026, the U.S. Department of Labor proposed a new rule addressing worker classification under three federal statutes, including the Fair Labor Standards Act. The proposal seeks to revive a framework first introduced in 2021 and effectively replaces a broader, more ambiguous rule that was finalized in 2024. For businesses deft at navigating regulatory shifts, the change might seem like small potatoes. But for those whose operations depend on independent contractors, the implications are more structural than cosmetic.

At the heart of the proposed rule are two questions: "Who controls the work?" and "Who stands to profit from it?" These are the "core factors" that inform proper classifications and they carry more weight than the surrounding considerations. For example, if a company dictates how, when and where a technician services a copier fleet, or if a company sets rigid protocols for a contractor's day-to-day tasks, the balance tilts toward employee status. But if the worker exercises meaningful discretion — choosing clients, setting rates, bearing risk and pursuing profit — the case for independent contractor status strengthens.

The entrepreneurial opportunity factor is particularly resonant in the dealer channel. The independent service tech who invests in tools, cultivates a book of business and negotiates contracts may indeed resemble a small business owner. But the technician who works exclusively for one dealership, follows prescribed workflows and has little ability to influence earnings beyond logging more hours begins to look like an employee.

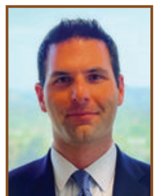
There are three additional considerations: the level of skill required, the permanence of the relationship and whether the work performed is integral to the business. None of these considerations are new and none operates in isolation. A skilled network engineer may still be an employee if the relationship is indefinite and the work — maintaining client systems — is central to the company's core offering. In this sense, the rule does not so much invent a new test as rebalance an old one, placing emphasis where the Department of Labor believes it has always belonged.

The practical question is not how the rule is phrased, but how to ensure compliance. Many dealerships have built hybrid workforces, blending employees with contractors to maintain flexibility and control costs. The proposed rule does not prohibit that model, but it does significantly narrow the margin for error. Classification is no longer a matter of labeling or contract language; it is, as the rule repeatedly suggests, a matter of economic reality.

Misclassifying workers is not a technical violation tucked away in a compliance manual; it is a liability that compounds quietly and then typically arrives in the form of a lawsuit, oftentimes a class action. Unpaid overtime, minimum wage shortfalls, tax exposure and potential penalties can accumulate over years, often triggered by a single audit or complaint. In industries where margins are already under pressure — from hardware commoditization to the relentless demand for managed services — such liabilities can be destabilizing.

There is also a subtler cost. Businesses that rely too heavily on nominal contractors may find themselves constrained in how they manage and grow. The more control a company exerts to ensure quality and consistency — which customers demand — the more it risks undermining the independent status of the workers it depends on. It is a paradox familiar to many in the field: the desire to standardize service can, over time, erode the legal foundation of the contractor model.

The proposed rule is not yet final and, like its predecessors, it may face challenges before it takes full effect. But waiting for certainty is not a sound compliance strategy. This is a moment to look at how work is actually performed, not merely how it is described. ■



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