

## FLSA Factors Introduction

The federal Fair Labor Standards Act (FLSA) prescribes minimum wage, overtime pay, recordkeeping, and child labor requirements for full-time and part-time employees in the private sector and in federal, state, and local governments. The provisions of the act only apply to employees, and not to independent contractors.

The term **employee** is defined in the act as “any individual employed by an employer.” Unfortunately, this definition provides little guidance for employers. To compound this problem, the Department of Labor has not issued regulations or interpretative bulletins to provide further guidance.

The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has also said that determination of the relationship cannot be based on isolated factors or upon a single characteristic, but depends upon the circumstances of the whole activity.

The goal of the analysis is to determine the underlying “economic reality” of the situation and whether the individual is economically dependent on the supposed employer. In general, an employee, as distinguished from an independent contractor who is engaged in a business of his or her own, is one who “follows the usual path of an employee” and is dependent on the business that he or she serves.

The factors that the Supreme Court has considered significant, although no single one is regarded as controlling, are:

- The degree of the worker’s independent business organization and operation.
- The extent to which the services rendered are an integral part of the principal’s business.
- The permanency of the relationship.
- The amount of the alleged contractor’s investment in facilities and equipment.
- The nature and degree of control by the principal.
- The alleged contractor’s opportunities for profit and loss.
- The level of skill and initiative required in performing the job and for the success of the claimed independent enterprise.

The list of factors is not exclusive, nor is the presence or absence of any particular factor dispositive.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by the state or local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

Businesses must weigh all relevant factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that make the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors that are relevant in one situation may not be relevant in another.