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## Compliance Connection

### February 2026

### Federal Compliance Update

#### **DOL Announces Proposed Independent Contractor Rule (here we go again)**

On Feb. 26, 2026, the U.S. Department of Labor (DOL) [announced](#) a proposed rule that would rescind the department's 2024 final independent contractor rule and replace it with an analysis for employee classification under the Fair Labor Standards Act (FLSA) similar to the one adopted by the DOL in 2021. The proposed rule was [published](#) in the Federal Register on Feb. 27, 2026.

#### **Background**

A worker's coverage by a particular law or entitlement to a particular benefit often depends on whether they are an employee or an independent contractor. In general, labor laws and related tax laws do not apply to independent contractors. Under the FLSA, employees are entitled to minimum wage, overtime pay and other benefits. Independent contractors are not entitled to these protections and benefits.

Employers who misclassify employees may be liable for expensive fines and litigation if a worker should have been classified as an employee and did not receive a benefit or protection they were entitled to by law.

#### **2024 Final Rule**

On Jan. 9, 2024, the DOL released a final rule, effective March 11, 2024, that revised the agency's guidance on how to analyze who is an employee or an independent contractor under the FLSA. The 2024 final rule rescinded the 2021 independent contractor rule that was published on Jan. 7, 2021, and restored the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA. Under the 2024 rule, six economic reality factors were all weighed to assess whether a worker was economically dependent on a potential employer for work, according to the totality of the circumstances. However, several federal lawsuits challenged the 2024 final rule. In those lawsuits, the DOL took the position that it was reconsidering the final rule, including whether to rescind it.

On May 1, 2025, the DOL issued [Field Assistance Bulletin 2025-1](#) on how to determine employee or independent contractor status when enforcing the FLSA. While the DOL reviewed the 2024 final rule, the DOL's Wage and Hour Division (WHD) stated it would no longer apply the 2024 final rule's analysis when determining employee versus independent contractor status in FLSA investigations. Instead, the WHD will rely on principles outlined in [Fact Sheet #13](#) and the reinstated [Opinion Letter FLSA2019-6](#), which addresses classification in the context of virtual marketplace platforms.

#### **Proposed Rule**

The proposed rule would:

- Apply an economic reality test to determine whether a worker is in business for themselves as an independent contractor or is an employee economically dependent on an employer for work;
- Identify and explain two core factors to help determine if a worker is economically dependent on an employer for work or in business for themselves:
  - The nature and degree of control over the work; and
  - The worker's opportunity for profit or loss based on initiative and/or investment;

- Identify other factors to help determine a worker’s status as an employee or independent contractor, including:
  - The amount of skill required for the work;
  - The degree of permanence of the working relationship; and
  - Whether the work is part of an integrated unit of production;
- Advise that the actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible; and
- Provide eight fact-specific examples applying the factors to real-life circumstances.

According to the DOL, the proposed rule is consistent with U.S. Supreme Court and federal circuit court precedent and would make it easier to properly differentiate between employees with the protections under the FLSA and those workers who work as independent contractors.

The proposed rule would also apply to the department’s streamlined analysis of the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act, both of which use the FLSA’s statutory definition of “employ.”

### **Employer Takeaway**

The 60-day public comment period for the DOL’s proposed rule ends on April 28, 2026. The department encourages all interested parties to submit comments on the proposed rule once it is published in the Federal Register.

Employers should monitor updates on the proposed rule, including the publication of a final rule and any related legal challenges. If the final rule takes effect, employers may consider modifying existing practices and policies to comply with the new standard for employee classification under the FLSA.

### **EEOC Rescinds 2024 Workplace Harassment Guidance**

On January 22, 2026, the Equal Employment Opportunity Commission (EEOC) voted to rescind its 2024 Enforcement Guidance on Harassment in the Workplace. The 2024 guidance, issued during the Biden administration, had expanded discussion of workplace harassment protections, including specific references to sexual orientation and gender identity following the U.S. Supreme Court’s decision in *Bostock v. Clayton County*.

The rescission followed a public meeting held under the Sunshine Act and came shortly after the issuance of Executive Order 14168, which directs federal agencies to remove policies and communications that promote what the order describes as “gender ideology.”

Advocates for rescinding the guidance maintained that the 2024 policy overstepped the EEOC’s role by effectively setting new regulatory requirements rather than providing clarification of existing statutes. They further emphasized that parts of the guidance had faced legal challenges and, in some cases, were found to be inconsistent with prevailing law. They also relied on the recent executive order as support for the Commission’s action.

The Commissioner expressed concern about rescinding the entire document without a notice-and-comment period and suggested a limited approach that would address only the contested provisions. She emphasized the longstanding principle that workplace harassment constitutes unlawful discrimination and questioned removing guidance in this area altogether.

### **What This Means for Employers**

With the 2024 guidance withdrawn, the EEOC is not currently providing updated interpretive guidance on workplace harassment. Although federal anti-discrimination laws remain in effect, the absence of agency guidance may create uncertainty for employers.

Employers should continue to maintain comprehensive, written anti-harassment policies; provide regular training for employees and supervisors; and promptly investigate complaints. In light of the evolving legal landscape, consulting experienced employment counsel may be advisable to ensure compliance with federal and state requirements.

Beyond federal compliance considerations, employers should also remain attentive to state-specific laws and regulatory obligations. For example, the Colorado Protecting Opportunities and Workers’ Rights (POWR) Act, which amended the Colorado Anti-Discrimination Act, now requires employers to implement certain defined program components in order to qualify for an affirmative defense to harassment and discrimination claims.

## NLRB Reinstates 2020 Joint Employer Rule

On Feb. 26, 2026, the National Labor Relations Board (NLRB) [announced](#) a final rule reestablishing the 2020 joint employer rule for determining joint-employer status. The final rule was [published](#) in the Federal Register on Feb. 27, 2026, and took effect immediately.

### Background

Joint-employment situations can happen when two or more employers share personnel hiring, supervision and management practices. When a joint-employment status exists, joint employers are equally responsible for compliance with applicable laws and regulations.

On Oct. 27, 2023, the NLRB published a final rule that established new criteria for determining joint-employer status as applied to labor issues under the National Labor Relations Act. The 2023 joint employer rule would have rescinded the existing 2020 joint-employer standard and replaced it with a more inclusive law, making it easier for employers to be classified as joint employers.

Originally, the final rule was to become effective on Dec. 26, 2023. However, the rule's effective date was extended several times, most recently to March 11, 2024. On March 8, 2024, the U.S. District Court for the Eastern District of Texas vacated the final rule. Then, on May 7, 2024, the NLRB appealed the decision to the U.S. Court of Appeals for the 5th Circuit. However, on July 19, 2024, the NLRB voluntarily dismissed its appeal to allow it time to consider issues raised by the Eastern District of Texas' decision and options for addressing outstanding joint-employer matters. As a result, the 2020 joint-employer rule remained in effect.

### Key Highlights

The NLRB announced it is revising its rules and regulations to replace the vacated regulatory text of the 2023 joint employer rule with the 2020 joint employer rule that remained in effect due to the vacatur. The final rule is to take effect immediately.

The final rule considers the “**substantial direct and immediate control**” employers have over the essential terms and conditions of employment for individuals employed by another organization. Specifically, the final rule indicates that a business is a joint employer of another employer's employees only if the degree of control is of sufficient magnitude to conclude that the joint employer meaningfully affects matters relating to the employment relationship. In addition, under the final rule, other evidence may suggest (but not prove) the existence of joint-employer status, particularly when it points to indirect control or the right to exert control through contract or agreement, even when control is never exercised.

### Employer Takeaway

The final rule replaces the vacated 2023 joint employer rule with the 2020 joint-employer standard. However, employers should have been relying on the 2020 joint-employer standard to determine whether joint employment exists since the U.S. District Court for the Eastern District of Texas' 2024 ruling.

## State Compliance Update

### Colorado Updates New Hire Reporting Requirements

Colorado employers should be aware of new reporting requirements under House Bill 1159, effective May 2025. The law updates the information that must be submitted to the Colorado State Directory of New Hires.

Under the revised requirements, employers must now include two additional data points on all New Hire Reports:

1. The worker's date of birth; and
2. An indication of whether the worker is a “service provider.”

For purposes of reporting, a “service provider” refers to certain independent contractors who perform services for compensation. Examples include rideshare drivers and delivery service providers. When reporting a service provider, employers must designate the worker as an independent contractor in the reporting system.

New hire reports for both employees and qualifying service providers must include the individual's full name, Social Security number, address, date of hire (or start of contract), and date of birth. Employers must also properly indicate whether the individual is an employee or independent contractor within the reporting portal.

## What This Means for Employers

Employers operating in Colorado should review their onboarding and contractor engagement processes to ensure compliance with the updated reporting requirements. Payroll, HR, and onboarding systems may need to be adjusted to capture date-of-birth information and correctly classify service providers at the time of reporting.

Failure to timely and accurately report required information could result in compliance issues. Employers should confirm that internal procedures—and any third-party payroll providers—are aligned with the new requirements ahead of the May 2025 effective date.

For more information, please [click](#) here.

## Employment Law Activity in the Colorado Legislature

The following provides a snapshot of employment-related legislation considered during the Colorado legislative session. It is not intended to be a comprehensive list of all bills introduced or acted upon. This summary is provided for informational purposes only and does not constitute legal advice or represent the opinions or positions of our firm.

### HB26 – 1005 Worker Protection Collective Bargaining <https://leg.colorado.gov/bills/HB26-1005>

What It Would Mean to Employers

- Likely expands collective bargaining rights and/or modifies union-related procedures.
- May impact how employers engage with unions, employee organizing efforts, and labor negotiations.

What Employers Should Be Aware Of

- Changes to union election processes or thresholds.
- Expanded worker protections related to organizing activity.
- Potential updates to employer communication restrictions during organizing campaigns.

Why It Matters to Businesses

- Could increase unionization activity and collective bargaining obligations.
- May impact operational flexibility, labor costs, and compliance requirements.
- Requires proactive HR training and updated labor relations strategies.

### HB26 – 1010 Older Adult Support & Representation In Workforce <https://leg.colorado.gov/bills/HB26-1010>

What It Would Mean to Employers

- Impacts employers in healthcare, social services, and aging-related workforce sectors.
- May create new workforce development programs or staffing requirements.

What Employers Should Be Aware Of

- Potential certification, staffing, or funding changes.
- New training or reporting obligations tied to elder care services.

Why It Matters to Businesses

- Could increase compliance requirements for long-term care and related industries.
- May create workforce funding opportunities or subsidies.

### HB26 – 1054 Protections for Worker Safety <https://leg.colorado.gov/bills/HB26-1054>

What It Would Mean to Employers

- Likely expands workplace safety standards or enforcement authority.
- May increase employer liability for unsafe conditions.

What Employers Should Be Aware Of

- New safety protocols, documentation requirements, or penalty structures.
- Expanded whistleblower protections.

Why It Matters to Businesses

- Increased compliance costs and potential enforcement risk.
- Greater exposure to claims and penalties for noncompliance.

### HB26 – 1058 Protections for Minors Featured in Digital Content <https://leg.colorado.gov/bills/HB26-1058>

What It Would Mean to Employers

- Impacts businesses using minors in digital media, influencer content, or entertainment.
- May impose compensation, trust account, or hour restrictions.

#### What Employers Should Be Aware Of

- Child labor law expansions into digital content spaces.
- Consent, earnings protections, and recordkeeping obligations.

#### Why It Matters to Businesses

- Affects marketing, entertainment, and influencer-based business models.
- Creates new compliance risks for companies leveraging youth content creators.

### **HB26 – 1143 Non-Employment Educational Opportunities Background Check Information**

<https://leg.colorado.gov/bills/HB26-1143>

#### What It Would Mean to Employers

- Clarifies use of background checks in educational or training contexts.

#### What Employers Should Be Aware Of

- Limitations on how background check information can be accessed or shared.
- Potential privacy and data-handling changes.

#### Why It Matters to Businesses

- Impacts employers offering internships, apprenticeships, or educational programs.
- Requires review of screening policies.

### **HB26 – 1207 Disclosure of Demographic Workforce Data** <https://leg.colorado.gov/bills/HB26-1207>

#### What It Would Mean to Employers

- Likely requires workforce demographic reporting.

#### What Employers Should Be Aware Of

- Expanded reporting to state agencies.
- Increased pay equity or diversity transparency obligations.

#### Why It Matters to Businesses

- Heightened public scrutiny around workforce diversity.
- Increased compliance and data management burdens.

### **HB26 – 1210 Prohibit Surveillance Price & Wage Setting** <https://leg.colorado.gov/bills/HB26-1210>

#### What It Would Mean to Employers

- Could restrict use of algorithmic tools for wage or price setting.
- Impacts businesses using workforce analytics software.

#### What Employers Should Be Aware Of

- Limits on AI or third-party benchmarking platforms.
- Antitrust or wage-fixing compliance implications.

#### Why It Matters to Businesses

- Significant impact on compensation strategy and pricing models.
- May require vendor review and compliance audits.

### **HB26 – 1272 Extreme Temperatures Worker Protections** <https://leg.colorado.gov/bills/HB26-1272>

#### What It Would Mean to Employers

- Establishes standards for working in extreme heat or cold.

#### What Employers Should Be Aware Of

- Required breaks, hydration, temperature monitoring, or schedule adjustments.
- Increased OSHA-style enforcement exposure.

#### Why It Matters to Businesses

- Major operational impact for construction, agriculture, warehouse, and outdoor industries.
- Increased costs for safety compliance.

### **SB26 – 045 Nuclear Workforce Development & Education Program** <https://leg.colorado.gov/bills/SB26-045>

#### What It Would Mean to Employers

- Creates workforce development pathways in nuclear energy fields.

#### What Employers Should Be Aware Of

- Potential grant funding or training partnerships.

#### Why It Matters to Businesses

- Workforce pipeline development for energy-sector employers.
- May offer recruitment and training incentives.

**SB26 – 047 Colorado Firefighter Safety Act Petition Elections** <https://leg.colorado.gov/bills/SB26-047>

What It Would Mean to Employers

- Impacts municipalities and fire protection districts.
- Alters petition/election procedures related to firefighter safety measures.

What Employers Should Be Aware Of

- Public sector labor implications.

Why It Matters to Businesses

- Indirect impact through municipal funding, taxes, or compliance expectations.

**SB26 – 052 Coal Transition Community Investment** <https://leg.colorado.gov/bills/SB26-052>

What It Would Mean to Employers

- Provides economic support to coal-transition communities.

What Employers Should Be Aware Of

- Grant or investment opportunities.

Why It Matters to Businesses

- Affects economic development, workforce availability, and local tax structures.

**SB26 – 081 Increase Agricultural Employee Overtime Protections** <https://leg.colorado.gov/bills/SB26-081>

What It Would Mean to Employers

- Expands overtime protections for agricultural workers.

What Employers Should Be Aware Of

- Lower overtime thresholds.
- Payroll system adjustments.
- Increased wage costs.

Why It Matters to Businesses

- Direct financial impact on farms and agricultural employers.
- Potential restructuring of scheduling practices.

**SB26 – 087 Create Legislative Leave Job Protection for General Assembly Members** <https://leg.colorado.gov/bills/SB26-087>

What It Would Mean to Employers

- Requires job-protected leave for employees serving in the General Assembly.

What Employers Should Be Aware Of

- Leave administration requirements.
- Benefit continuation obligations.

Why It Matters to Businesses

- Workforce planning implications.
- Potential backfill and temporary staffing costs.

**SB26 – 093 Workers' Compensation Insurance Coverage Verification** <https://leg.colorado.gov/bills/SB26-093>

What It Would Mean to Employers

- Establishes or strengthens verification of workers' comp coverage.

What Employers Should Be Aware Of

- Documentation and proof-of-coverage requirements.
- Increased enforcement mechanisms.

Why It Matters to Businesses

- Ensures compliance oversight.
- Reduces uninsured employer risk exposure but increases administrative obligations.

# Compliance Calendar

## March

3/2 – Deadline to Distribute Forms 1095-B and 1095-C

3/2 – Deadline to Submit OSHA 300, 300A, and 301 Data

3/2 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (paper filers)

3/2 – Medicare Part D Creditable Coverage Disclosure Deadline (calendar year plans)

3/31 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (electronic filers)

## April

4/30 – Removal of OSHA Form 300At

## May

Nothing for May

### Disclaimer:

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