



## HR Highlights

January 2024

### **NEW! USDOL Changes to Classification as an Independent Contractor**

Effective March 11, 2024, the U.S. Department of Labor (USDOL) will begin enforcing a new final rule for determining whether workers are properly classified as an independent contractor or if these individuals should be classified as an employee. Employees are subject to the Fair Labor Standards Act (FLSA) and independent contractors are not. Misclassifying employees as independent contractors can result in serious liability for agencies under the FLSA for the recovery of back wages and can also involve civil penalties for nonpayment of payroll taxes.

There are six factors which must be applicable in determining whether a worker is an independent contractor who is in business for themselves:

1. The degree to which the employer controls how the work is done.
2. The worker's opportunity for profit or loss.
3. The amount of skill and initiative required for the work.
4. The degree of permanence of the working relationship.
5. The worker's investment in equipment or materials required for the task.
6. The extent to which the service rendered is an integral part of the employer's business.

For example:

An IT Software Developer is hired by Agency XYZ to develop an application to develop an interface for several critical software applications used by the agency. This individual is most likely classified as a true independent contractor under the six factors because:

1. The Developer determines how the interface will be completed and a schedule for reaching project milestones.
2. The Developer sets the price for the work.
3. The Developer possesses the skills for the project and will not rely upon the Agency for training.
4. The working relationship is temporary, lasting only as long as the completion of the project.
5. The Developer owns and supplies his own equipment.
6. The Developer is not involved with the Agency's primary business operations.

It is also important that Agency management is not directly engaged in supervising and directing the activities of the Contractor. However, it is appropriate to establish oversight of the project's progress and the desired outcomes.

This is a great time to assess your workforce and ensure that workers are appropriately classified. For questions and guidance related to independent contractors, please contact the DHRM Policy Team at [policy@dhrm.virginia.gov](mailto:policy@dhrm.virginia.gov) .