



## Update on PFAS and Independent Contractor Status

The Environmental Protection Agency (EPA) and the Department of Labor (DOL) recently changed courses on the implementation of regulatory actions previously reported on by the DTA. Members should take note of the following changes.

### **1. The Upcoming PFAS Reporting Requirement has been Delayed.**

In a [previous counsel alert](#), DTA informed its members that the EPA had finalized regulations for reporting per- and polyfluoroalkyl substances (PFAS). Under this one-time reporting requirement, manufacturers and importers of PFAS and articles containing PFAS in them need to report their use, disposal and hazards associated with these PFAS that occurred during the period January 1, 2011, through December 31, 2022.

Originally, the reporting period was to open on November 13, 2024, which was then paused until July 11, 2025. This date has been extended again. **Now, the PFAS reporting period will open on April 13, 2026, and close on October 13, 2026.**

Also, the EPA announced it is considering reopening for public comment certain aspects of the reporting requirement. If that were to happen, then the EPA will publish a separate notice, and the DTA will inform its members at that time of this action.

### **2. The DOL Reverts to Previous Test for Determining Independent Contractor or Employee Status**

As [previously reported](#) by the DTA, in January 2024, the DOL released a final rulemaking in which it announced a new test for determining whether one was an employee or an independent contractor. It is now taking steps to walk back from that test and to reinstate the test it used previously, known as the "economic reality" test. In doing so, the DOL will now look to see if the employee "follows the usual path of an employee and is dependent on the business which he or she serves."

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No single rule or factor will be considered dispositive. Instead, the following factors laid down by the U.S. Supreme Court should be considered:

- 1) The extent to which the services rendered are an integral part of the principal's business.
- 2) The permanency of the relationship.
- 3) The amount of the alleged contractor's investment in facilities and equipment.
- 4) The nature and degree of control by the principal.
- 5) The alleged contractor's opportunities for profit and loss.
- 6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- 7) The degree of independent business organization and operation.

Similarly, certain factors are immaterial in determining whether an employment relationship exists. For example, the lack of a formal employment agreement or the time and mode of payment do not determine the employee's status.

Employee status is important to DTA members. Employees are subject to federal, and state minimum wage and overtime pay laws as well as other federal and state laws and regulations governing the employer-employee relationship.

If you have any questions about this alert or the topic, please contact Rick Van Arnam, DTA's regulatory affairs counsel, at [rvanarnam@barnesrichardson.com](mailto:rvanarnam@barnesrichardson.com).