

April 28, 2026

Division of Regulation, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Department of Labor Notice of Proposed Rulemaking, Docket No. RIN 1235-AA46, Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

Dear Administrator Rogers:

TechNet appreciates the opportunity to submit comments to the U.S. Department of Labor's Wage and Hour Division regarding the Notice of Proposed Rulemaking, "Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act." TechNet supports the Division's interpretation of the Supreme Court's "economic reality" test and urges the Department of Labor (DOL) to finalize the proposed rule.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy. Our diverse membership includes over 100 dynamic American businesses—ranging from startups to the most iconic companies in the world—and represents approximately five million employees across the information technology, artificial intelligence, e-commerce, gig economy, advanced energy, transportation, cybersecurity, venture capital, and finance sectors.

The Importance of Independent Work in the Modern Economy

The American workforce is evolving rapidly. Technology has enabled new forms of work that expand opportunity, lower barriers to entry, and allow individuals to tailor work to their lives. Independent work—whether through freelancing, consulting, platform-based work, or entrepreneurship—has become a critical component of this modern economy.

As TechNet has consistently emphasized, many workers choose independent work precisely because it offers flexibility: the ability to determine when, where, and how

they work; to supplement income; and to pursue entrepreneurial opportunities. These opportunities are particularly valuable for students, caregivers, veterans, retirees, and individuals seeking to balance multiple obligations.

Independent work also plays a vital role for businesses, including TechNet's members, that rely on flexible, specialized, and project-based talent across sectors such as construction, logistics, and professional services. These industries are foundational to innovation, infrastructure development, and economic growth.

Restoring and Clarifying the Economic Reality Analysis

TechNet supports the Department's effort to restore clarity and predictability to the independent contractor analysis. Uncertainty in classification standards can deter legitimate independent contracting, chill innovation, and impose unnecessary legal risk on both workers and businesses.

We therefore support the proposed rule's return to a framework that centers on core indicators of economic independence, particularly (1) the nature and degree of employer control over the work performed, and (2) the worker's opportunity for profit or loss based on initiative or investment. These core factors reflect longstanding judicial precedent and better align with the realities of today's economy than rigid or overly complex multi-factor tests. They provide meaningful guideposts that enable businesses and workers to structure relationships with confidence.

- TechNet strongly supports the Department readopting the 2021 guidance clarifying that a business's requirement that a worker comply with applicable laws, regulations, and safety standards does not, standing alone, indicate the type of control relevant to the economic reality analysis. As the proposed rule emphasizes, the ultimate inquiry is whether a worker is economically dependent on a business or is in business for themselves, assessed through core factors such as control over the work and opportunity for profit or loss. Requiring adherence to health and safety rules, licensing requirements, or other legal standards reflects baseline compliance with external mandates, not the exercise of employer control over the manner and means of work. Treating such requirements as indicia of control would create a perverse incentive for businesses to relax compliance practices, undermining the safety of all workers and the public without providing meaningful insight into economic dependence.
- TechNet encourages the Department to further clarify that technology-enabled communications that support contractual performance do not constitute control over the manner and means of work. TechNet urges the Department to add specific examples of such communications in its final rule, including notifications reminding a worker of an approaching deadline they have already agreed to. These prompts reflect the worker's pre-existing contractual obligations, not direction by the company as to how the work is performed. They are analogous to standard deadline reminders or calendar alerts in any arm's-length

commercial relationship and should not be treated as evidence of employer control.

- TechNet urges the Department to draw a clear distinction in the “permanence” analysis between continuity driven by *employer requirements* and continuity that reflects a *worker’s own voluntary and repeated choices*. A worker who independently establishes a routine for when to log on or accept opportunities is exercising autonomy, not demonstrating economic dependence. Worker-initiated patterns of engagement should not weigh in favor of employee status where they reflect personal preference rather than employer-imposed expectations.
- TechNet appreciates the Department restoring the primacy of “actual practice.” To provide further certainty regarding “how to weigh evidence of ‘actual practices’ against unexercised contractual provisions or theoretical possibilities,” TechNet urges the Department to clarify in the final rule that where contractual terms accurately reflect the actual practices of the parties, those terms should be treated as probative evidence of economic reality. Recognizing such terms as meaningful evidence will improve consistency and better align the analysis with how independent business relationships are structured in practice.
- TechNet notes that a key indicator of independence is the ability to accept or decline specific opportunities without repercussion and to work for multiple clients or competitors simultaneously. These practical indicia of control reflect genuine worker independence and should continue to weigh heavily in the economic reality analysis.
- TechNet supports the Department’s effort to harmonize the application of the economic reality framework across the *Fair Labor Standards Act*, the *Family and Medical Leave Act*, and the *Migrant and Seasonal Agricultural Worker Protection Act*. A consistent standard across these statutes will reduce compliance complexity for businesses operating across sectors and provide clearer expectations for workers, particularly for companies with exposure under multiple federal labor frameworks.

Overall, TechNet supports the Department’s approach of centering the analysis on the most probative indicators of economic independence while clarifying that compliance with legal and safety requirements is not evidence of control. This framework better reflects economic reality, aligns with longstanding precedent, and avoids disincentivizing responsible business practices. By providing clear, practical guidance, the proposed rule promotes consistent application of the law, supports innovation and workforce flexibility, and ensures that both workers and businesses can confidently structure independent relationships.

Preserving Flexibility and Worker Choice

For many companies, growth, innovation, and global competitiveness require preserving worker choice and flexibility. Independent work is a preferred and intentional arrangement for millions of Americans. Survey data and industry experience consistently show that independent workers value control over their schedules and workload, the ability to work for multiple clients, and opportunities for entrepreneurship and income diversification.

Available worker data across the independent work ecosystem reinforces that flexibility is the central value proposition driving participation in independent work arrangements. For app-based workers in particular, research commissioned by the Flex Association finds that more than 80 percent of app-based earners report satisfaction with platform work, and 42 percent cite flexibility of hours as the primary reason they choose to participate.¹ More broadly, three out of four app-based earners prefer to maintain their independent contractor status, reflecting a strong and consistent preference for autonomy and control over work.² These findings are reinforced by evidence that many independent workers engage in app-based work on a part-time or supplemental basis, often maintaining multiple income streams and structuring work around other professional or personal commitments. Together, this evidence underscores that independent work is a deliberate, preference-driven choice, and that preserving flexibility is essential to maintaining the value of these opportunities for workers.

Overly restrictive classification standards risk eliminating these opportunities by forcing workers into traditional employment models that do not meet their needs. TechNet urges the Department to ensure that the final rule does not inadvertently narrow the availability of independent work by overemphasizing factors that do not reflect economic dependence, penalizing long-term but voluntary contractor relationships, or treating flexibility-enhancing practices as factors weighing in favor of employment.

Avoiding Overbroad or Rigid Tests

TechNet agrees with the Department's rejection of alternative approaches such as a control-only or threshold test, which would improperly elevate a single factor and ignore economic reality; and the ABC test, which is overly rigid and has proven unworkable in practice at the state level.

As demonstrated in state experiences, rigid tests can require extensive and widespread carve-outs and exemptions to avoid eliminating legitimate independent work arrangements, underscoring the importance of a flexible, totality-based

¹ Public First, *U.S. App-Based Rideshare and Delivery: Economic Impact Report* (commissioned by the Flex Association, Mar. 2024), available at <https://flex.publicfirst.co/>.

² *Id.*

economic reality framework. A one-size-fits-all framework is ill-suited to a diverse and rapidly evolving economy and can lead to continued legal uncertainty and reduced opportunities for workers and businesses alike.

The Role of Technology and Innovation in Worker Classification

The modern workplace is increasingly shaped by digital platforms, data tools, and artificial intelligence. The use of technology, including AI tools, is analogous to providing standard tools or specifications, which in many instances enables workers to perform contracted services more safely and efficiently. It should not be misconstrued as evidence of employer control. Treating such practices as indicative of employment would undermine both innovation and the Department's broader goals of preparing the workforce for an AI-driven economy.

The Opportunity for Policy Modernization

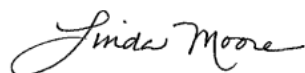
While classification clarity is essential, TechNet also encourages the Department and Congress to pursue broader modernization of labor policy. Current federal law often creates a binary choice between flexibility and access to benefits. TechNet has long supported exploring portable benefits models that would allow independent workers to access healthcare, retirement savings, and other protections without sacrificing their independent status. A modern framework should preserve independent work opportunities, expand access to benefits, and encourage innovation in workforce arrangements.

Conclusion

TechNet appreciates the Department's efforts to provide a clearer and more workable framework for determining independent contractor status. A standard that emphasizes economic independence, provides predictability, and reflects modern work realities will benefit workers, businesses, and the broader economy.

We look forward to continued engagement with the Department on policies that support innovation, economic opportunity, and the future of work.

Sincerely,



Linda Moore,
President and CEO