



## Another Reversal By The Trump Board! Traditional Independent Contractor Test Restored

On Jan. 25, the NLRB issued a new decision in which it overruled an Obama-board precedent regarding who can be considered independent contractors, and reverted to its traditional common law test.

The decision abandons the test set in 2014 by the NLRB under the Obama administration, which sought to put primary emphasis on whether the workers at issue were economically dependent on organization. For example, if an independent contractor was retained by only one company and thus relied on payments from that company for income, then that could weigh against her/him being an independent contractor – if not be completely dispositive of the issue. It downplayed – and arguably ignored – whether a contractor had the opportunity to go and out and seek additional economic gain, such as by contracting to provide services to multiple companies. This was bad for employers because it narrowed the number of workers who could be properly classified as independent contractors.

According to a [press release issued by the agency](#) on Jan. 25:

“Today, the National Labor Relations Board returned to its long-standing independent-contractor standard, reaffirming the Board’s adherence to the traditional common-law test. In doing so, the Board clarified the role entrepreneurial opportunity plays in its determination of independent-contractor status, as the D.C. Circuit has recognized.”

Accordingly, the board will again look at and weigh various factors when evaluating whether a worker is properly classified as an independent contractor, such as the amount of control a company exercises over a worker, level of skill needed for the job, and manner of payment. This is great news for employers who utilize the services of independent contractors.

Independent contractor status poses significant consequences under the

National Labor Relations Act (NLRA), because such workers are not covered under the act. This means they cannot form unions or seek redress for any alleged violations of the act. However, employers must take care to ensure they do not misclassify workers as independent contractors, because that [can pose significant legal risk](#) to a company, including under the NLRA.