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REGULATORY INTELLIGENCE BRIEF · ONE PAGE

The independent contractor rule: the fight has moved inside the control factor

Docket WHD-2026-0001 RIN 1235-AA46 Final rule at OIRA since Sep. 28, 2026 Version 1.0, Oct. 25, 2026

KEY JUDGMENT

The final rule will very likely keep the two core factors, control and the opportunity for profit or loss, and extend the test to the FMLA and the MSPA. The open question is what counts as control, and on that point platforms and their workers are contesting the same tools.

Instacart and TechNet ask the Department to place matching algorithms, incentives and app notifications outside control. Critical drivers describe acceptance-rate tiers, penalties and hidden pay as the control they work under. The final rule's treatment of algorithmic management may prove more consequential for platform compliance than its choice of core factors.

THREE JUDGMENTS FROM THE RECORD

1 **Algorithmic management is the decisive question.** Moderate confidence

At least 43 of 115 supporting letters ask for changes, and control is the most common subject. Because the proposal measures control by actual practice, the Department's treatment of app-based work could materially shape how platforms assess their classification risks.

2 **The comment count measures mobilization.** High confidence

Four forms and templates wrote 95.9% of the 16,363 typed comments, all in support. In a random sample, 28 of 88 unprompted personal comments criticize the rule or platform pay and control (32%, 95% interval 23 to 42%). The high volume reflects concentrated template mobilization and says little about the range of substantive arguments.

3 **Federal reclassification will not displace state tests.** Moderate confidence

The rule changes the federal test only. California, Massachusetts and New Jersey keep their ABC tests, and New Jersey adopted final ABC rules for its wage and unemployment laws on May 5, 2026, operative October 1. Nine supporting letters cite state ABC tests, most as a warning. Multi-state operators will face overlapping classification standards, and 40 of 48 opposing letters frame the stakes through state unemployment insurance and tax revenue.

WHO STANDS WHERE, 170 ATTACHED LETTERS

Support, 115. All platforms, 83 of 87 business and trade groups, the Senate HELP chair, the SBA Office of Advocacy.

Oppose, 48. Worker advocates, 6 of 7 unions, 7 of 10 government senders, and union-signatory construction contractors. Six letters seek major changes and one takes no position.

SIGNPOSTS

Dec. 27, 2026	OIRA reaches day 90 of its standard review. The period can be extended and no legal deadline applies.
On publication	The control examples for app work, construction and regulated industries, and how the Department answers the objections to its cost analysis.
After publication	State legislation on classification, and the pending cases over the 2024 rule. Challenge risk is material if the core-factor weighting stays unchanged.

WHAT IT MEANS FOR YOU

App platforms

Inventory matching, incentive, acceptance-rate and penalty practices now. On publication, assess them against the control guidance.

Financial services

Check whether the final text separates mandatory securities compliance from control, as your associations asked.

Trucking

Test lease-purchase and speed-limiter arrangements against the final examples, separating required compliance from operational control.

Construction

Map subcontracting and supervision practices to the final examples. If the rule gives the sector no specific treatment, weigh a request for a DOL opinion letter.

Multi-state employers

Plan for overlapping standards. The federal change leaves state ABC tests and state unemployment rules in place.

Worker groups and states

Compile state fiscal estimates and match them to the objections already on file, then judge the final rule by how it answers them.

Full report. Every claim traced to its source, positions and arguments by sector and sender, scenarios with their assumptions, and data files. Get it through the ComtIQ waitlist. When the final rule publishes, ComtIQ will audit what the Department accepted, rejected or left unanswered.

Coverage. 16,498 public records collected; 16,363 typed comments classified; 170 distinct attached letters reviewed in full; 120 personal comments coded by hand from a random sample.

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