



New Test For A New Year? Labor Board Reconsiders Independent Contractor Status

January 4, 2022 | | [Labor And Employment](#), [National Labor Relations Board](#), [Union Organizing](#)



**David J.
Pryzbylski**
Partner

Many companies use independent contractors to supplement various parts of their workforce. Such workers are exempt from coverage of most relevant federal employment laws, including the National Labor Relations Act (NLRA). That means, for example, an independent contractor generally does not have the right to form or join a union in the private sector. However, employers should be aware that the National Labor Relations Board (NLRB) recently announced it will be revisiting the legal test it utilizes to evaluate who qualifies as an independent contractor.

According to a [NLRB press release](#), the agency is inviting briefs regarding whether it should adhere to a standard issued in [2019 under the prior administration](#) that arguably makes it easier for employers to classify workers as independent contractors under the NLRA. The current standard takes into account 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.

It is likely the [new Biden Board](#) will modify the current framework and adopt a test that further restricts when a company can properly classify someone as an independent contractor. This could have significant consequences for [companies like Uber](#) and others in the gig economy who heavily rely on this

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

NLRB NLRA Employee Rights Act

model.

Another related issue the Biden Board could take up is whether the mere act of misclassifying someone as an independent contractor violates the NLRA. Under current NLRB precedent, [that is not the case](#). The new Board, however, may have a different view.

Determining whether workers are employees or independent contractors under the NLRA or other employment laws can be a tricky and nuanced exercise. Employers who have independent contractors should take notice that this may get even more difficult in the near future.