April 28, 2026

Daniel Navarrete
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW,
Washington, DC 20210

Submitted via regulations.gov

RE: SHRM's Comment on the Wage and Hour Division's proposed rule on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, RIN 1235-AA46

Dear Director Navarrete,

As the trusted authority on all things work, SHRM is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today's evolving workplaces. With nearly 340,000 members in 180 countries, SHRM touches the lives of more than 362 million workers and their families globally. SHRM's membership of HR professionals and business executives operates at the intersection of talent acquisition, people management, and compliance. By leveraging the collective experience and expertise of our membership, SHRM provides insights grounded in data and practical, real-world experience.

SHRM and the undersigned state councils support and welcome the opportunity to comment on the Department of Labor's (DOL) Wage and Hour Division's ("the Division") proposed rule on employee or independent contractor status under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act ("proposed rule").[1]

I. Introduction: Necessity of Action and SHRM's Perspective

Marked by the rapid expansion of artificial intelligence (AI) and emerging technologies, and amid a sustained talent shortage and shifting demographics, organizations today face a multitude of challenges as they balance operational needs with workforce realities in a rapidly evolving economy. Meeting these challenges requires innovation, flexibility, and investment in internal

[1] SHRM state councils are independent, member-led affiliate bodies that coordinate SHRM's efforts across an entire state, supporting local chapters while advancing statewide professional development, workforce initiatives, and public policy engagement.

talent pipelines, learning and development initiatives, and, whenever necessary, alternative staffing arrangements.

While the labor market has improved for some organizations, recruitment challenges have persisted for many others, indicating that the road ahead will remain complex. These trends underscore the need for organizations to adapt their various recruitment and talent strategies and consider new approaches to meet workforce needs effectively. This includes strategies that broaden talent pools, fill critical roles, and strengthen organizations through diverse skills and perspectives, including leveraging independent workers. Organizations often engage independent contractors for specific operational needs. SHRM research found that the two most popular reasons were to staff specific projects or initiatives (61%) and to access unique skill sets or experience not available among employees (53%).[2]

SHRM engages on worker classification across regulatory, judicial, and legislative fronts at both the federal and state levels and under multiple statutes. Across these efforts, SHRM has consistently emphasized that the law should not prefer one type of worker relationship over another, as such bias may improperly tilt outcomes toward employee classification. This is an outcome not supported by workers or organizations. SHRM research found that a plurality of independent workers preferred to maintain their independent status, and over two-thirds (68%) of organizations disagreed that all workers should be classified as employees.[3]

Beyond perceived worker preference, compensation disparities are often cited as justification for favoring employee classification, yet SHRM data challenged this assumption as less than one in ten organizations (8%) reported paying independent contractors less than employees, while 51% reported paying more and 41% reported paying equivalent amounts. Across federal, state, and city minimum wage categories, virtually all independent workers earn at or above the applicable minimum wage.

Finally, access to training and benefits similarly reflects structural and legal constraints rather than the superiority of employee status. Organizations most often refrain from providing training because contractors are expected to have the necessary skills upon engagement (78%) or because their roles are short-term or highly specialized (53%). Other reasons involve legal or compliance concerns, such as avoiding the appearance of an employer-employee relationship (36%) or the risk that training could trigger classification questions (28%). Benefits follow a similar pattern: 38% of respondents stated they would be willing to offer some benefits to independent workers if there was no risk of misclassification, with flexible work arrangements (40%), health-related benefits (31%), and professional development support (31%) cited most often.

[2] Unless otherwise noted, all percentages are derived from SHRM's 2025 report, *The Case for FLSA Modernization*. The values cited in this comment can be found in Attachment A.

[3] Sources: *SHRM Global Worker Project: A Human-Centered Approach to the Contemporary Global Workforce* - Supplemental, SHRM, 2025, and *The Case for FLSA Modernization*, SHRM, 2025 (respectively).

It is SHRM's ardent belief, backed by research, that neither employee nor independent contractor status is inherently "better," and that public policy should avoid pushing workers into one classification based on outdated or incorrect assumptions. Workplace demographics are shifting, technology is creating new markets and flexible worker opportunities, and individuals are increasingly choosing how work fits into their lives. Public policy must recognize that multiple work arrangements allow organizations to attract and retain the talent they need while giving workers access to benefits aligned with the nature of their engagement and financial goals.

II. Individualized Considerations: SHRM's Assessment on the Proposed Rule

SHRM strongly supports the proposed rule and urges the Division to finalize it with the clarifications and refinements identified below.

(A) Areas of Support

(i) Support for the proposed rescission of the 2024 Rule and the reinstatement of the 2021 Rule's core factors framework

SHRM believes that the Division has provided legally sufficient reasons for reversing the 2024 rule, as the seven-factor framework undermined the rule's own goals of clarity and accuracy. Additionally, the 2024 rule's unweighted totality-of-circumstances approach contradicted judicial consensus, as no appellate decision has been identified in which both core factors pointed toward independent contractor status, but the court found employee status, or vice versa — a point acknowledged and endorsed in the 2026 proposed rule. The 2024 rule imposed disproportionate burdens on small and mid-size employers, who often lack in-house legal resources.

SHRM also strongly supports emphasizing economic dependence as the central factor and designating the two core factors, which gives greater weight to the individual's control over the work and opportunity for profit or loss than to the additional factors. This more sustainable and practical framework is central to SHRM's support for the proposed rule, which is informed by member insights and extensive case law.[4]

(ii) Support for clarifying and refining concepts of "actual practice" and "economic dependence"

SHRM supports the proposed rule's primacy of actual practice principle (§ 795.110), characterizing reserved rights as "merely less relevant" rather than completely irrelevant. This preserves the evidentiary value of contract language as an expression of the parties' intent while preventing boilerplate from overriding economic reality. That is also why a well-drafted written agreement, while not determinative, is a valid and relevant artifact of the parties' negotiated

[4] Relevant case law includes *Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369, 382 (5th Cir. 2019), and *Iontchev v. AAA Cab Serv.*, 685 F. App'x 548 (9th Cir. 2017).

relationship. Courts and investigators should examine whether a party has ever prevented the other from exercising a contractual right.

Additionally, SHRM supports the modified definition of economic dependence (§ 795.105(b)), which distinguishes dependence on a business for work from dependence on income level. This clarification addresses the common conflation of low earnings with employee status and aligns with SHRM's position that analysis must focus on the specific worker-business relationship rather than individual financial circumstances.

(iii) Support for returning to the *Rutherford Food Corp. v. McComb* framework

The 2026 proposed rule appropriately returns to the standard set forth in *Rutherford Food Corp. v. McComb*, emphasizing an "integrated unit of production" rather than the 2024 rule's broader "critical, necessary, or central" formulation.[5] This shift is both necessary and more consistent with longstanding legal principles.

As noted above, organizations engage independent contractors for a wide range of legitimate business reasons, including to staff specific projects or initiatives (61%), to access unique skill sets that employees do not have (53%), and to address seasonal or short-term needs (49%). SHRM survey data found that, among organizations that have utilized independent contractors, responses on the type of work the independent contractor did were evenly distributed across three categories: (1) work central to the organization's mission (such as handling overflow or providing temporary coverage for employee absences) (51%), (2) work that supports the organization's mission (including administrative support, communications, scheduling, and event coordination) (54%), and (3) work outside the organization's core mission (such as janitorial services, creative or design work, facilities maintenance, IT support, security, and food services) (55%).

Across these categories — from overflow support to administrative functions to outsourced services — it would be difficult to identify any organization that does not view such work as "critical, necessary, or central" in some respect. Organizations invest in these services precisely because they are valuable. Likewise, independent contractors themselves would reasonably view their contributions similarly, given the expertise and specialized skills they provide. As SHRM and the proposed rule correctly recognize, the 2024 formulation risked sweeping nearly all independent contractor relationships into employee status by creating a circular and overly expansive standard. The fact that work is important to a business does not mean it is integrated into the workflow of the business in the manner contemplated by the *Rutherford Food Corp. v. McComb* framework.

Proper classification depends on the economic realities of the relationship. For example, an organization may enter into a contract with an independent worker to address overflow demand but does not control how or when tasks are completed nor restrict the worker from performing similar services for competitors, which supports independent contractor status. By contrast,

[5] 331 U.S. 722 (1947).

employers typically direct employees in the time, manner, and method of their work, provide fixed compensation, and limit their ability to influence earnings. This same analysis applies across all categories of contracted work — whether central, supportive, or outside the organization's core mission.[6] The proposed rule's return to an "integrated unit of production" framework more accurately captures the distinction between independent contractors and employees and provides a clearer, more administrable standard for worker classification. Understanding the breadth and nuances of that distinction is what makes the proposed rule clearer and the improvements to "integrated" welcomed by SHRM.

(B) Area of Concern

SHRM has concerns about the proposed rule's "control-first" alternative (§ V.E) that it posits as a possible reformulation of the relevant factors analysis, under which a determination that the control factor indicates employee status would terminate the analysis without considering opportunity for profit or loss or other factors. This approach is inconsistent with Supreme Court precedent in *Bartels v. Birmingham* (332 U.S. 126 (1947)), structurally unworkable in practice, and counterproductive to the proposed rule's goal of clarity. A control-first rule would collapse the economic reality test into the common law test, eliminating the multi-factor balancing that has distinguished FLSA analysis since 1947. It would also concentrate uncertainty in threshold litigation over the fact-intensive determination of whether control indicates employee status, rather than reducing ambiguity. SHRM strongly urges the Division to maintain the two-core-factor analysis as the foundation for classification decisions.

(C) Opportunities for Additional Refinement

SHRM recommends several clarifications to ensure the final rule is operationally effective and consistent with precedent. The rule should expressly state that training provided to independent contractors, whether legally required or voluntary, does not constitute evidence of control over the manner or means of work, provided it does not direct the worker's day-to-day performance. This includes Occupational Safety and Health Administration (OSHA) required or voluntary safety training; anti-harassment or anti-discrimination training mandated by federal or state law; compliance and auditing measures (including immigration and wage-and-hour verification); access to benefits that the worker may accept or decline; and personal protective equipment or workplace safety protocols. Additionally, the final rule should state that independent workers can access to AI-enhanced processes and tools without consideration of such access being treated as evidence of training indicative of employment status. This is necessary to ensure the workforce is AI-ready, including the independent contractor workforce.

Resolving these conflicts is particularly important for small and mid-size employers, who may otherwise withhold necessary training to avoid misclassification risk. The preamble of the final

[6] For the preceding example, SHRM notes that the analysis follows the federal model and the framework contemplated in the 2026 rule. However, some states impose different statutory requirements for determining whether a worker is an employee for purposes of state law, which do not always align with the same logic described above.

rule should also acknowledge the Internal Revenue Service (IRS)/OSHA conflict and confirm that the Division's interpretation of control under Part 795 aligns with OSHA's multi-employer policy.

The final rule should further clarify that reserved contractual rights (e.g., rights not exercised by the business) are materially less probative than actual practice, and that workers' unexercised contractual rights — such as performing services for multiple businesses — affirmatively weigh in favor of independent contractor status. Similarly, working with little or no supervision should support independent contractor classification, regardless of why supervision is absent.[7]

SHRM offers its support, expresses concern, and presents these refinements to help the Division provide organizations with the certainty needed for accurate, forward-looking classification decisions.

III. Clarity, Consistency, and Compliance: Core Considerations for Effective Policy

The evolving world of work demands flexibility and agility, making clear, consistent, and compliance-oriented worker classification rules essential. Classification is more than a label: Statutory protections for employees create corresponding obligations for employers, whereas independent contractors are not covered by wage-and-hour laws, including minimum wage and overtime. Misclassification can therefore be costly and retroactive. Under the FLSA, even small unpaid amounts can accumulate into substantial liability, and collective actions can quickly scale claims, exponentially increasing potential damages.

Misclassification or unclear designations can trigger wage, tax, benefits, safety, and labor law consequences, even for relationships never intended as traditional employment by either party. Additionally, the same worker may be classified differently under various federal and state laws, creating a complex landscape. Understanding the applicable legal test is therefore essential for policies, compliance, training, safety, and enterprise risk management.

(A) Ensure Clarity in Classification Standards

Determining whether a worker is an employee under the law is fundamental, and confusion in this area has led to compliance risks, litigation, and inconsistent enforcement. SHRM research shows that 69% of organizations reported that variability and inconsistency in employee classification regulations create compliance challenges. Additionally, misclassification poses significant risks, with 55% citing legal concerns and 47% highlighting financial concerns for their organizations. Clear standards enable HR professionals to implement workplace practices with confidence. Part of enhancing clarity is connecting policy to practice and linking regulatory guidance to how it is understood, so that organizations are not required to make illogical leaps. The proposed rule's

[7] *Estate of Suskovich v. Anthem Health Plans of Va*., 553 F.3d 559, 566 (7th Cir. 2009)).

focus on economic dependence as the central consideration, and its prioritization of the core factors, seeks to do that.

According to SHRM's 2025 FLSA survey, among the factors organizations rely on most when determining worker classification, "Nature and Degree of Control" ranks highest, selected by 42% of respondents — more than double the next factor, "Degree of Permanence of the Work Relationship" (18%). Even more nuanced, when asked specifically about usefulness, only 4% indicated it was not useful, while 80% indicated it was either very or moderately useful (49% and 31% respectively). This is consistent with SHRM's 2022 survey results, which found that, when determining how to classify workers, the top two factors organizations consider are the nature and degree of control the worker has over the terms and conditions of their employment (61%) and the degree of permanence of the work relationship (53%).[8] Consistently, "Nature and Degree of Control" has been the most useful and remains the hallmark factor in practical classification assessments — making its inclusion as a core factor logical.[9]

Although not part of the core factors, SHRM survey respondents consistently ranked the "Degree of Permanence of the Work Relationship" as the second most useful indicator — though in the most recent survey, its relative importance was somewhat lower when respondents were asked to choose only one factor. This discrepancy is understandable, as permanence often serves as a tangible, easily recognized proxy for the opportunity for profit or loss from an organizational perspective. This is not to diminish the importance of permanence, which remains included among the additional or secondary "guidepost" factors that provide context, but rather explain why SHRM believes it is less determinative than the stated core factors.

(B) **Promote Consistency Across Federal Guidance**

The proposed rule presents a critical opportunity to align federal guidance across agencies, addressing long-standing inconsistencies between the IRS, OSHA, and others. Currently, HR professionals face directly contradictory directives when managing the employee versus independent contractor relationship. IRS guidance treats training provided by a business to a worker as a factor indicating employment, listing training as one of 20 factors pointing toward employee status under the common law control test. At the same time, OSHA requires host employers to ensure the safety of temporary and contract workers performing work on their premises, as articulated in the Multi-Employer Workplace Policy (CPL 02-00-124) and the Temporary Worker Initiative (2013, renewed 2015). Under OSHA, employers can be held directly liable if independent contractors or temporary workers do not receive site-specific safety training.

[8] Source: DOL Independent Contractor Ruling Survey Results, SHRM, 2022 (Unpublished).

[9] As detailed in Section II(B) of this comment, SHRM is not asserting that control is the only relevant factor, but rather that it is an important and highly valued consideration for organizations and therefore appropriately treated as a core factor. Detailed in Attachment A, SHRM research found that organizations recognize the importance of the other factors, and that while, overall, control emerged as the leading factor, respondents attributed value to the full range of considerations in worker classification analysis.

As a result, HR professionals who comply with OSHA by providing safety training to independent contractors may inadvertently generate evidence of control under IRS standards and, without clear guidance in the final rule, under the Division's own test. As previously noted, over one in three employers (36%) and nearly three in ten employers (28%) do not offer training to independent contractors to avoid creating the appearance of an employer-employee relationship and because training contractors may raise legal or compliance concerns regarding worker classification, respectively. SHRM takes this issue seriously, as no other category of commenter experiences this conflict operationally. While attorneys advise on it and academics write about it, SHRM members encounter it directly on the plant floor, the construction site, and the warehouse loading dock each time a contract worker is onboarded.

The current proposed rule partially addresses this issue. Section 795.105(d)(1)(i) correctly clarifies that compliance with safety standards does not indicate control, which is a necessary step. However, it is insufficient because it only addresses mandatory legal compliance. It does not clearly cover voluntary safety training that exceeds the legal minimum, anti-harassment and anti-discrimination training required by state law but not federal law, site-specific orientation mandated by host employer insurance carriers, or training requested by the independent contractor's own client.

Without explicit coverage for these categories, HR practitioners may withhold beneficial training to avoid classification risk, undermining worker safety, exposing the public to preventable harm, and conflicting with OSHA's regulatory objectives. The final rule presents an opportunity for the Division, along with the DOL, to address these issues across subagencies and other federal regulatory bodies. The Division should coordinate with OSHA and the Treasury Department to issue a joint statement ensuring a consistent federal interpretation. SHRM supports such alignment to reduce administrative burden, minimize inadvertent noncompliance, and prioritize worker safety and well-being. Clear, consistent guidance will allow organizations to provide necessary training without fear of inadvertently creating evidence of control, and in doing so, protect both workers and the public while maintaining operational efficiency.

(C) **Support Compliance in Organizational Operations**

Worker classification directly shapes how organizations structure their relationships and manage their workforce. Businesses approach employees and independent contractors differently because each status carries distinct legal rights and obligations. The employee designation triggers statutory protections, including minimum wage, overtime, benefits, and vicarious liability, while the independent contractor designation generally does not. Independent contractors enjoy the right to be free from supervision and control with respect to the manner and means by which they provide services. Independent contractors also enjoy opportunities to provide services for competing companies and choose the ways, equipment, and other means to maximize their profits. Employees do not retain these rights by virtue of their status. As a result, organizations tailor their policies, payroll practices, training programs, and oversight to the classification of the worker. SHRM

survey data illustrated this distinction in behavior as organizations reported providing independent contractors with training primarily to address operational, compliance, and safety requirements rather than to exert employment-style control.

Most organizations provide training to help contractors understand company policies and compliance requirements (70%), familiarize them with company tools and systems that may be relevant to the services they provide (68%), maintain quality and performance standards (67%), and support safe work practices to reduce risk or liability (65%). In contrast, training that generally and potentially alludes to an employment-style relationship — such as helping contractors represent the organization's brand or culture (43%), improving productivity (40%), enhancing collaboration with internal teams (37%), or preparing contractors for potential transition to employee roles (16%) — is far less common. These patterns demonstrate that employers, when offering training, consciously adjust their behaviors to reflect the different rights and responsibilities of employees versus independent contractors. This aligns with earlier data showing that 38% of employers would provide benefits if doing so would not risk worker misclassification. Overall, employers approach different work arrangements intentionally, balancing the goal of meeting organizational needs with minimizing legal and operational risk. In practice, this caution can lead to independent contractors receiving fewer opportunities and, in some cases, limited access to training, tools, or upskilling resources that are otherwise standard for employees.

At a time marked by rapid technological advancement, SHRM emphasizes the importance of ensuring that no workers are left behind. However, concerns about inadvertently signaling an employment relationship can lead organizations to hesitate in extending even neutral supports such as training, information, or access to emerging technologies. Consistent with safety standards, contractors should be able to access AI tools and related resources without fear that agencies will interpret such access, on its own, as creating an employment relationship.

This behavioral distinction underscores the importance of accessible, clear, consistent, and compliance-oriented guidance on worker classification before problems arise, rather than retroactively through litigation or regulatory enforcement. Employers need to understand classification requirements in advance so they can structure relationships lawfully and make informed operational decisions in real time. Equally, workers require this clarity to make informed choices about how work fits into their lives, the degree of control they are willing to accept, and how they will manage their responsibilities and opportunities. Reducing unnecessary risk and supporting workforce flexibility better enables organizations to operate effectively, leverage diverse talent pools, and respond to evolving workforce needs in a predictable and lawful manner.

IV. Additional Resources: SHRM Recommendations for Implementation Support

The final rule provides a meaningful opportunity to offer additional clarity within the regulation itself and to publish complementary resources that support practical application.

(A) Development of Illustrative Examples

In particular, including illustrative examples within the final rule would be highly valuable. Those responsible for day-to-day implementation do not always have the capacity to parse dense legal and regulatory text, and clear, real-world examples can help translate complex standards into actionable guidance. For example, the Division should add an illustrative example at § 795.115, showing a business providing mandatory safety orientation, anti-harassment training, and personal protective equipment to a contract worker, with the conclusion that none of these actions, individually or collectively, constitutes control under the economic realities test.

(B) Creation of Complementary Plain-Language Guidance

SHRM requests that, after finalization, the Division issue a plain-language guidance document tailored specifically for employers and HR professionals, not solely general counsel. This resource could include a short-form decision framework or flowchart that applies the two core factors in the sequence HR practitioners typically follow during initial classification, a checklist of provisions that support independent contractor status when applied in practice, and common scenario-based examples. The Division should present these examples without legal jargon and organize them around core HR functions such as staffing, onboarding, benefits, compliance, and training. The guidance should also clearly identify conduct that does not constitute control, incorporating the clarifications requested in Section II(C) of this comment.

Additional supporting resources — such as webinars, FAQs, and consultation opportunities — would assist HR professionals and small businesses in implementing the rule effectively. To maximize their impact, SHRM recommends that the Division develop these materials in consultation with stakeholders with subject-matter expertise, including SHRM. SHRM is well positioned to support these efforts by providing real-time feedback on how HR professionals receive and apply the rule, as well as ongoing insights as the Division issues opinion letters and court decisions shape its interpretation. With its membership that is sector-agnostic and geographically diverse, representing employers of all sizes across nearly every industry, SHRM stands ready to partner with the Division to expand understanding of regulatory requirements and their practical application, help to mitigate compliance risks, and support workforce development. Guided by the principle, "*If it's a work thing, it's a SHRM thing*," SHRM leverages data, research, and practical insights to inform policy, provide operational tools, and help employers and HR professionals implement worker classification standards effectively and consistently.

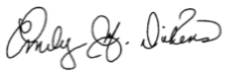
(C) Utilization of SHRM as a Strategic Distribution Partner

Following publication of the final rule and any accompanying materials, SHRM commits to broadly disseminating guidance through its member communication channels to ensure it reaches the professionals responsible for implementation. With a network that includes 556 chapters and 51 state councils, SHRM has the infrastructure to rapidly distribute guidance, best practices, and updates to employers across industries and geographies. This reach enables the Division to scale its guidance efficiently while helping organizations implement the rule correctly and consistently.

V. Conclusion: SHRM's Commitment to Clear, Workable, and Balanced Policy

SHRM and its membership are committed to promoting public policy that creates clear, workable rules that both protect workers and enable effective workforce management. SHRM's regulatory advocacy prioritizes clarity, consistency, and compliance because, with a direct line to those on the ground, SHRM knows that the law works best when those charged with its implementation understand it and can communicate it effectively. Agencies must equally respect the decisions and choices of workers regarding how work fits into their lives. SHRM is committed to elevating the collective experience and expertise of our members and stands ready to support the development, implementation, and refinement of policies that balance compliance, operational flexibility, business continuity, and worker choice.

Sincerely,



Emily M. Dickens, J.D.
Chief Administrative Officer
SHRM

Undersigned State Councils:

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SHRM Idaho	SHRM Pennsylvania
SHRM Illinois	SHRM South Carolina
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Massachusetts State Council of SHRM	Utah SHRM
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SHRM Michigan	Wisconsin SHRM Council
Minnesota State Council of SHRM	Wyoming SHRM State Council

Attachment A

In 2025, SHRM surveyed its membership on key topics within the Fair Labor Standards Act (FLSA). SHRM asked respondents about worker classification, overtime exemption status, compensable time, and the continuous workday. The following excerpt presents key figures used throughout this comment. SHRM rounded the values within the comment to the nearest percentage.

Which of the DOL's Seven Economic Reality Factors matter the most when determining worker classification?

ANSWER: Among the seven economic factors that the DOL presents to determine worker classification, HR professionals identified "Nature and Degree of Control" as both the most useful factor and the single factor their organizations rely on the most when determining worker classification.

KEY DATA POINTS: [1]

- The most useful economic factor for determining worker classification was "Nature and Degree of Control", with a total of 81% of HR professionals saying it was either moderately useful (31%) or very useful (49%).
- "Nature and Degree of Control" was identified as the factor organizations rely on the most when determining worker classification (43%), followed by "Degree of Permanence of the Work Relationship" (19%) and "Skill and Initiative" (14%).

How useful are the following factors for determining worker classification?	**Very useful**	**Moderately useful**	**Slightly useful**	**Not useful**
Nature and Degree of Control	49%	31%	15%	4%
Degree of Permanence of the Work Relationship	38%	36%	19%	7%

[1] Taken from the total sample size of 1,211. Percentages may not equal 100% due to rounding.

Extent to Which the Work is Integral to the Employer's Business	34%	36%	23%	7%
Skill and Initiative	27%	40%	25%	8%
Opportunity for Profit or Loss Depending on Managerial Skill	18%	35%	30%	17%
Investments by the Worker and the Employer	17%	36%	30%	17%
Additional Factors Relevant to Economic Dependence	9%	32%	41%	18%

What challenges do organizations face due to inconsistent employee classification regulations?

ANSWER: Inconsistent employee classification regulations create significant compliance, legal, and financial challenges for organizations. Most HR professionals agree there is a need for federal laws to establish a uniform definition of an 'employee' and that clearer legislative guidelines would benefit their organizations.

KEY DATA POINTS:[2]

- 69% of organizations say variability and inconsistency in employee classification regulations create compliance challenges for their organizations.
- The inconsistency in regulations creates significant legal (55%) and financial (47%) concerns associated with misclassification at organizations.
- When asked if the FLSA is equipped to handle today's workplace, 45% of HR professionals said it was not, 39% were neutral, and only 16% agreed that it was equipped to handle today's workplaces.

If employment risks were mitigated, what benefits would organizations provide to independent contractors?

ANSWER: The majority of employers would not choose to offer benefits to independent contractors even if employment classification risks were mitigated. Among those willing to provide benefits to independent contractors if the risk was mitigated, the most common benefits they would offer are flexible working benefits, health-related benefits, and professional and career development benefits.

If your organization could choose to provide certain benefits to independent contractors without risking their status as non-employee workers, which of the following benefits categories would your organization be willing to offer independent contractors?[3] (Top 5 Responses)

- Flexible Working Benefits (40%)

[2] Taken from the total sample size of 1,211.

[3] N = 463; data only from HR professionals who said their organization would be willing to provide certain benefits to independent contractors if it didn't risk their status as non-employees; respondents could select multiple answers.

- Health-Related Benefits (31%)
- Professional and Career Development Benefits (31%)
- Wellness Benefits (30%)
- Technology Benefits (29%)

For this option, respondents were given a mutually exclusive choice of "N/A, my organization would not choose to do it." While respondents could select multiple benefits, this option could only be selected on its own. As a result, although 62% selected this exclusive response, 38% indicated a willingness to provide at least one benefit to independent workers.

How do organizations engage with and leverage independent contractors for strategic needs?

ANSWER: Organizations that contract independent contractors leverage them for flexibility, unique skill sets, and project-specific needs, often paying them equal to or more than employees and above minimum wage. While most organizations do not provide training, as they expect contractors to bring the required expertise, those that do provide training primarily focus on company policies and compliance.

KEY DATA POINTS:[4]

- The three most common types of workers businesses contract with are independent contractors (71%), temporary workers (48%), and subcontractor workers (45%).
    - **Independent contractor workers.** Workers whom find customers or companies either online or in person who pay them directly to fulfill a contract or provide a product or service. Examples include an independent consultant or a freelance worker.
    - **Temporary workers.** Workers who are paid by a temporary service or staffing agency that contracts time out to other organizations to perform temporary tasks and jobs. Examples of work include manual labor, administrative tasks, and other activities that can be performed with little or no advanced training.
    - **Subcontractor workers.** Workers whom are paid by a company that contracts services out to other organizations. Examples of work include security, landscaping, computer programming, construction, project management, or maintenance.
- Independent contractors are utilized across diverse functions fairly evenly, tasked with work that is central to (51%), in support of (54%), and outside of (55%) the organization's central mission.
- The top reasons organizations contract independent contractors are to staff specific projects or initiatives (61%), to access unique skill sets that employees don't have (53%), and to address seasonal or short-term needs (49%).

[4] N = 814; question only presented to those who contract with independent contractors; respondents could select multiple answers.

- Organizations that hire independent contractors typically pay them more than (51%) or about the same (41%) as their employees. Only 8% pay their independent contractors less than employees.
- At least eight out of ten organizations that hire independent contractors pay them above the federal (90%), state (89%), and city (83%) minimum wage.

Why does your organization provide training for independent contractors?[5]

- To ensure contractors understand company policies, procedures, and compliance requirements (70%)
- To familiarize contractors with company tools, technology, or systems (68%)
- To maintain consistent quality and performance standards across all workers (67%)
- To support safe work practices and reduce risk or liability (65%)
- To meet client or regulatory training requirements (48%)
- To help contractors represent the organization's brand or values appropriately (43%)
- To improve contractor productivity and efficiency (40%)
- To enhance collaboration and communication with internal teams (37%)
- To prepare contractors for potential transition into employee roles (16%)

Why doesn't your organization provide training for independent contractors?[6]

- Because contractors are expected to have the necessary skills and expertise upon engagement (78%)
- Because contractor roles are short-term or highly specialized, making training unnecessary (53%)
- To avoid creating the appearance of an employer–employee relationship (36%)
- Because training contractors may raise legal or compliance concerns regarding worker classification (28%)
- To limit administrative burden and resource investment in non-employees (16%)
- Because the organization provides written guidelines or documentation instead of formal training (9%)

Methodology: The "*Case for FLSA Modernization*" survey was fielded through the SHRM Voice of Work Research Panel on October 31st, 2025, through November 3rd, 2025. A total of 1,211 HR professionals completed the survey on behalf of their organizations. The data is unweighted and is not a representative sample of all organizations. While these findings provide valuable insights, care should be taken when generalizing them to broader populations, as they reflect the perspectives of the HR professionals surveyed.

[5] N = 323; question only presented to those who provide training to their contractors; respondents could select multiple answers.
[6] N = 405; question only presented to those who do not provide training to their contractors; respondents could select multiple answers.