



December 13, 2022

Amy DeBisschop
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, D.C. 20210

Comments on RIN 1235-AA43: Employee or Independent Contractor Classification Under the Fair Labor Standards Act

Dear Ms. DeBisschop,

On behalf of the Department for Professional Employees, AFL-CIO (DPE) and our affiliate unions in the arts, entertainment, and media industries, I write in support of the U.S. Department of Labor’s (DOL) proposed rule on independent contractor classification under the Fair Labor Standards Act (FLSA).

By way of introduction, DPE is a coalition of 24 national unions, 12 of which are unions representing professionals working in the arts, entertainment, and media industries. DPE coordinates activities among these 12 unions, including advocating for shared policy priorities. These unions’ members work as actors, stagehands, craftspeople, choreographers, dancers, directors, musicians, stunt performers, instrumentalists, writers, singers, stage managers, recording artists, broadcasters, audio engineers, photographers, editors, and in many other creative professions. At organizations large and small, they help power a sector of the economy that regularly generates four percent of the United States’ gross domestic product (GDP), creates a positive trade balance, and employs more than five million people.

The members of DPE’s affiliate unions in the arts, entertainment, and media industries are proud that, through collective bargaining, they have helped create a sector where people can work in W-2 jobs that provide family-supporting pay; affordable, quality healthcare; retirement security; and safe working conditions. These standards were not won overnight or handed down benevolently. Rather, they were achieved through years of union creative professionals coming together to earn a fair return on their work as employees. **For this reason, DPE and its affiliate unions in the arts, entertainment, and media industries support DOL’s proposed rule on employee/independent contractor classification.**



DOL's proposed six-factor "economic reality" test and its totality-of-the-circumstances approach is critical to ensuring that people who work in the arts, entertainment, and media industries can realize their rights under the FLSA. While popular culture may glamorize the industries in which they work, the vast majority of creative professionals and journalists are like most working people in any other industry; they are employees who depend on finding work in the business of others. A typical creative professional or journalist does not have power over key business decisions, nor do they make capital or entrepreneurial investments in the entities for which they work. They go to work for an employing entity, using their specialized skill in furtherance of that employer's business, while being precluded from working for others at the same time due to job demands.

What is relatively unique about the arts, entertainment, and media industries is the gig-based nature of employment. Due to the relatively short duration of any one production, performance, or assignment, creative professionals and journalists may have multiple employers throughout a calendar year. Some, such as an actor or stagehand, may even have multiple employers in a single week. However, these individuals are typically not in business for themselves, and the duration of their employment is an inherent feature of the industries in which they work, not a result of creative professionals' independent business decisions.

The proposed rule provides clarity and focus for workers and businesses alike in the creative industries. In a sector where the work can be seen as a hobby, the clear articulation of who is covered under the FLSA is critical for ensuring that all creative professionals can earn fair pay and benefits. Otherwise, careers in the arts, entertainment, and media industries will be limited to a narrow, non-inclusive set of people fortunate enough to be able to withstand the financial volatility and economic hardship that too often can occur when employers misclassify employees as independent contractors.

For these reasons, DPE and its affiliate unions in the arts, entertainment, and media industries support the implementation of the proposed rule. If you have any questions, please contact me or DPE's Assistant to the President/Legislative Director, Michael Wasser at mwasser@dpeaflcio.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "JDorning", is centered below the text "Sincerely,".

Jennifer Dorning, President