NAR Issue Summaries

Business / Worker Classification (independent contractor v. employee)

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits.

As a result, calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years. The U.S. Department of Labor (DOL) had proposed and reproposed changes to the Fair Labor Standards Act (FLSA), the federal law governing minimum wage and overtime requirements, considering ways to reclassify more workers as "employees" rather than "independent contractors" to address these concerns.

On February 26, 2026, the DOL issued a new proposed Independent Contractor Rule for how workers should be assessed and classified under the Fair Labor Standards Act (FLSA). The new proposed rule rescinds the previous Biden-era rule, and adopts and economic reality test to assess whether a worker is an independent contractor or an employee. The economic reality test focuses on two core factors to determine if a worker is economically dependent or independent as it relates to his or her work. The proposed rule is streamlined and more predictable streamlined approach to how workers should be classified under the FLSA.

NAR submitted comments in support of the rule, but also generally believes that real estate agents should be provided an exemption under the law, and continues to advocate in support of measures that ensure that real estate professionals classification is protected under federal labor and tax laws.

To date, regulatory actions have not directly impacted the Internal Revenue Code (IRC) statutory protection for qualified real estate professionals as independent contractors (26 U.S.C. §3508), but DOL's focus on these issues is adding confusion and uncertainty for the industry and could have the effect of misclassifying workers.

I am a real estate professional. What does this mean for my business?

Losing the independent contractor status for real estate agents would dramatically change the structure of the industry. With the continued focus at the federal and state levels on reclassifying workers as employees, it is important to ensure compliance with laws and regulations governing business models to avoid legal challenges. NAR has developed several resources including a Window to the Law video and guidance document for understanding independent contractor status best practices.

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NAR Policy:

NAR strongly supports the continued right of brokers to choose whether to classify agents as employees or independent contractors. NAR supports actions at the state level to strengthen the rights of brokers to make these determinations and will resist efforts at the federal level to weaken those rights.

Opposition Arguments:

Those calling for a crackdown on improper worker classification believe that many employers classify workers as independent contractors simply to avoid existing requirements of state and federal labor law,*i.e.*overtime pay, employer Social Security contributions, workers compensation requirements, health insurance employer mandate, etc.

Legislative/Regulatory Status/Outlook

In recent years, Congressional committees with jurisdiction over workplace issues have been reviewing the use of independent contractors in the "gig" economy business model. NAR continues to track and participate in any discussions that have the potential to impact the independent contractor model used by real estate brokerages.

Federal legislation supported by NAR has been introduced that would mirror IRC section 3508 into the FLSA to provide additional certainty for real estate professionals' classification as independent contractors. (H.R. 3495, the "Direct Seller and Real Estate Harmonization Act.") Aligning the FLSA with the IRC would ensure professionals in the real estate industry can continue to operate their businesses and support economic growth with legal certainty.

New state legislation and new federal rules expanding the definition of employee continue to threaten a worker's ability to be classified as an independent contractor. On February 26, 2026, the U.S. Department of Labor (DOL) issued a new proposed independent contractor rule for how workers are classified under the Fair Labor Standards Act (FLSA). The proposed rule adopts an economic reality test and focuses primarily on two core factors for assessing whether a worker is an independent contractor or employee. NAR submitted a formal comment on the rule.

Outside of the federal realm, there has been an increase in court cases brought at the state level, notably in California and Massachusetts, contesting the independent contractor status of real estate professionals. Visitwww.nar.realtor/independent-contractor-statusfor complete information on pending litigation and the legal status of independent contractor designation.

In a recent state court case, Kennedy v. Weichert, the New Jersey Supreme Court held that agreements classifying real estate professionals as independent contractors is the dispositive factor of a salesperson's classification status under New Jersey's Brokers Act. This case was a major win for real estate professionals and independent contractors within the industry.

NAR will continue to monitor federal and state action on these issues.

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Current Legislation/Regulation (bill number or regulation)

H.R. 3495 Direct Seller and Real Estate Agent Harmonization Act

Employee or Independent Contractor Classification Under the Fair Labor Standards Act Rule

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