



October 26, 2020

Administrator Cheryl Stanton  
Wage and Hour Division  
Department of Labor  
200 Constitution Avenue, N.W.  
Room S-3502  
Washington, D.C. 20210

**Re: Independent Contractor Status under the Fair Labor Standards Act (RIN: 1235-AA34)**

Dear Administrator Stanton:

On behalf of the National Demolition Association (NDA), we respectfully submit the following comments regarding the Department of Labor's proposed rule to revise its interpretation of independent contractor status under the Fair Labor Standards Act (FLSA) which was announced on September 22, 2020.

The National Demolition Association represents nearly 500 U.S. and Canadian companies that offer standard demolition services as well as a full range of demolition-related services and products. NDA educates members on the latest advances in equipment and services, provides educational programs and tools to stay abreast of regulatory and safety matters and keeps regulators informed about issues in our industry. NDA also increases public awareness of the economic and societal benefits of demolition.

According to DOL, the proposed rule would adopt an "economic reality" test to determine a worker's status as an FLSA employee or an independent contractor. The test considers whether a worker is in business for himself or herself (independent contractor) or is economically dependent on a putative employer for work (employee). The rule identifies and explains two "core factors" to help determine if a worker is economically dependent on someone else's business or is in business for himself or herself. Specifically, these two "core factors" are the nature and degree of the worker's control over the work and the worker's opportunity for profit or loss based on initiative and/or investment.

NDA strongly supports efforts by the Administration to provide more clarity as it pertains to the classification of independent contractors under the FLSA. NDA agrees with the Department of Labor that further action is needed to simplify the worker classification process and more accurately identify an independent contractor. The ongoing uncertainty regarding what constitutes an independent contractor has led to costly litigation for small businesses and further damaged the relationships between employers and workers.

To this end, NDA believes that employers and workers should have the freedom and flexibility to engage in work arrangements that meet the specific needs and preferences of both parties involved. NDA believes the proposed rule strikes an appropriate balance in protecting the rights of employers and employees while ensuring workers have the ability to pursue employment opportunities that work best for their career.

NDA appreciates the ability to provide comment on this issue. Please contact Kevin McKenney at [kmckenney@demolitionassociation.com](mailto:kmckenney@demolitionassociation.com) or 202-367-2480 with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Lambert". The signature is fluid and cursive, with the first name "Jeff" being more prominent and the last name "Lambert" following in a similar style.

Jeff Lambert  
Chief Executive Officer