MINIMUM WAGE (STATE LAW)

- January 1, 2021 the rate of not less than eleven dollars ($11.00) per hour except as otherwise provided in this subchapter.

Ark. Code Ann. § 11-4-210 (West)
Executive,

administrative, and

professional white-collar employees are exempt from both minimum wage and overtime provisions if they meet all the requirements specified for their job category.

These are not the only exemptions, but are the most typical in Arkansas cities and towns.
Salary is 50% of the exemptions, not the only factor!

Since 2019 the salary “test” for FLSA exemptions is $35,568 annually

- Executive employees
- Administrative employee
- Professional employee
EXEMPTIONS - DUTIES

- Executive employees
- Administrative employee
- Professional employee
EMPLOYEE? CONTRACTOR?

- It is important to determine whether the work is in fact an independent contractor or an employee.

  - IRS Withholdings
  - Retirement Withholdings
  - Health Insurance
  - Other possible benefits (OR PENALTIES).

- FLSA only deals with overtime and minimum wage but its very important to get it right.
EMPLOYEE? CONTRACTOR?

• In drawing the lines between independent contractors and employees, Arkansas courts look to the totality of the circumstances.


• This means the courts weigh various circumstances or facts in deciding whether someone is an independent contractor or employee.

• The Arkansas Supreme Court has consistently held that an independent contractor is one who contracts to do a job according to his or her own method and without being subject to the control of the other party, except as to the result of the work. *Id.*
Courts in this district that have considered this issue examine six factors to determine the economic reality of the working relationship.

- (1) The nature and degree of the alleged employer's control as to the manner in which the work is to be performed;
- (2) The alleged employee's opportunity for profit or loss depending upon his managerial skill;
- (3) The alleged employee's investment in equipment or materials required for his task, or his employment of workers;
- (4) Whether the service rendered requires a special skill;
- (5) The degree of permanency and duration of the working relationship;
- (6) The extent to which the service rendered is an integral part of the alleged employer's business.
The Department’s proposed rule would:

- Adopt the “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.

- Identifies and explains two “core factors,” specifically 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.

- Advises that the actual practice is more relevant than what may be contractually or theoretically possible in determining whether a worker is an employee or an independent contractor.
QUESTIONS?