

Chevron is Gone.

What's Next for Labor and Employment Law?

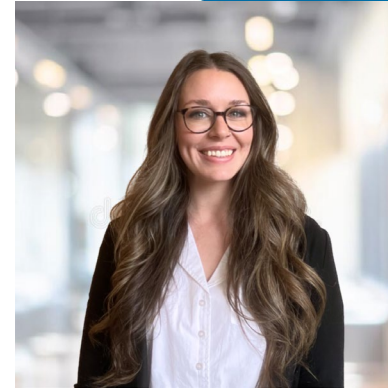
July 25, 2024

Today's Webinar Host:

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Who We Are



- Technology Platform
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

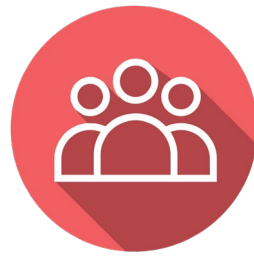
What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



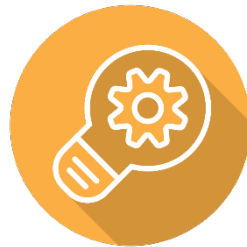
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



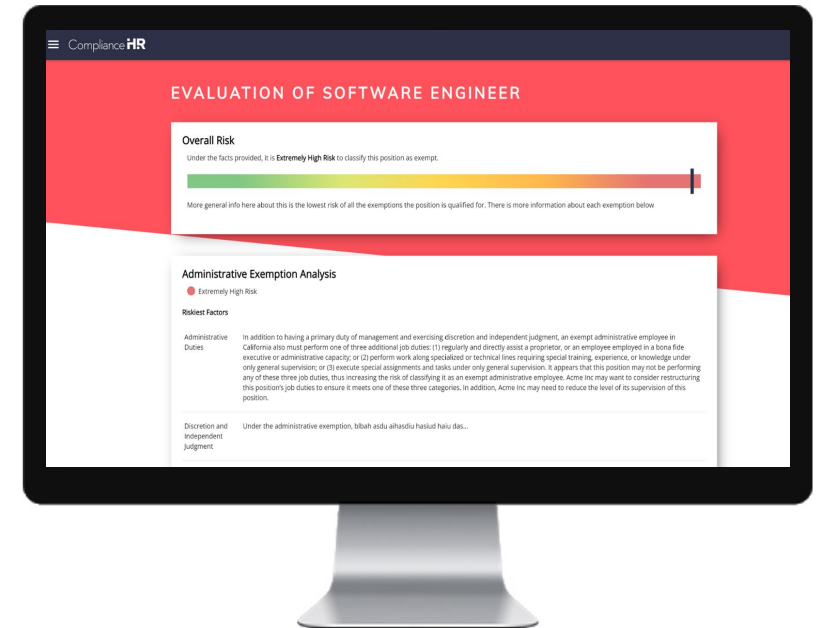
The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle



Navigator Overtime

- Determines employee as exempt or non-exempt
- Applies all applicable federal and state tests
- Draws from a proprietary engine of 2,400+ reported court decisions and DOL opinion letters
- Delivers reasoned suggestions on how to lower the risk of misclassification
- Provides the risk result, a summary of relevant federal & state exemption standards, and a transcript of answers



EVALUATION OF MANAGER C



Report Summary

This is an evaluation of **Manager C in California** based on the questionnaire submitted by **worth+demo@compliancehr.com**.

Overall Risk

Without taking compensation into account, it is **Moderately High Risk** to classify this position as exempt.



This is the lowest risk of all the exemptions the position is qualified for. Learn more about compensation requirements and each exemption below.

Overall Compensation Requirements

Compensation Requirements Met

This position meets the relevant compensation requirements.

Analysis of the Administrative Exemption

Moderately High Risk

Compensation Requirements Met

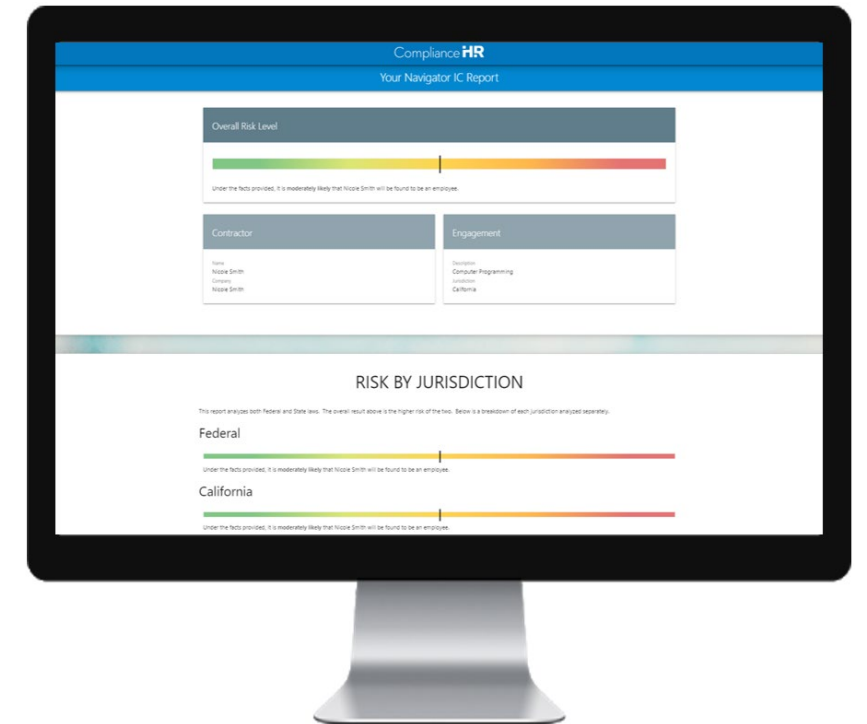
Riskiest Factors

Discretion and Independent Judgment To qualify for the administrative exemption, a position must exercise discretion and independent judgment on matters of significance. The exercise of discretion and independent judgment involves comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered. The exercise of discretion and independent judgment implies the position has authority to make an independent choice, free from immediate direction or supervision. Discretion and independent judgment does not require that the decisions made by a position have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that a position's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the position is not exercising discretion and independent judgment. However, the exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques,



Navigator Independent Contractor

- Determines employee or independent contractor status
- Draws from a proprietary engine of 1,900 reported court decisions and DOL opinion letters
- Analyzes individual fact patterns under all applicable federal and state regulations
- Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, a summary of applicable laws, and a transcript of questionnaire answers



Immediate Expert Guidance

RISK BY JURISDICTION

This report analyzes both Federal and State laws. The overall result above is the higher risk of the two. Below is a breakdown of each jurisdiction analyzed separately.

Federal

Under the facts provided it is **moderately** likely that Nicole Smith LLC will be found to be an employee.

New York

Under the facts provided it is **highly** likely that Nicole Smith LLC will be found to be an employee.

LOWERING YOUR RISK

You may be able to lower your risk score by taking the following steps.

Reimbursement of Business Expenses

Generally, independent contractors are responsible for their own business expenses and are not reimbursed by the engaging company. In contrast, employees do not typically have any significant unreimbursed expenses.

Although reimbursing a contractor for travel costs rarely, by itself, determines employee status, ComplianceHR Demo may be able to reduce its risk score by minimizing the number and types of expenses for which MJ Corp is reimbursed.

Contractor Economic Dependence on the Company

An independent contractor is not economically dependent on the engaging company; it operates independently of the engaging company. The success of the

ComplianceHR			
TRANSCRIPT			
Question	Manager Response	Contractor Response	Reconciled Response
Will Nicole Smith's work hours be set by ComplianceHR Demo?	No company will not control contractor work hours	No company will not control contractor work hours	No company will not control contractor work hours
Under the terms of engagement, how much control can ComplianceHR Demo assert over the order of work in which Nicole Smith will perform the work?	Some general guidelines on Company expectations	No control	Some general guidelines on Company expectations
To what degree is the work to be performed by Nicole Smith core to ComplianceHR Demo's business?	Somewhat		
Please indicate the level of instruction ComplianceHR Demo will give Nicole Smith:	Detailed instructions on how to perform only some of the work	Basic instructions on how to perform the work	Detailed instructions on how to perform only some of the work
Has Nicole Smith ever been an employee of ComplianceHR Demo?	No	No	No
Will ComplianceHR Demo control where Nicole Smith can perform the work under this engagement?	Yes the company will require the contractor to work at a customer location	Yes because the work cannot be performed elsewhere	Yes because the work cannot be performed elsewhere
Are ComplianceHR Demo employees performing the same or similar work that Nicole Smith is being engaged to perform?	No		
Is Nicole Smith required to personally perform the work?	Contractor can hire employees or subs	Contractor can find subs or refer work out	Contractor can hire employees or subs

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Click the link at the top of your screen
3. Visit the link in the Resources panel

Benefits of a custom demonstration:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)

[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)

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The Supreme Court issued four major administrative-law cases:

None of the cases involved an employment or labor agency, but all of them could change labor and employment law

Corner Post, Inc. v. Board of Governors of the Federal Reserve:

The APA's six-year statute of limitations starts from the date of injury, not the rule's publication date.

Ohio v. EPA: An agency acts arbitrarily and capriciously if it ignores significant issues from public comments. Requires more thorough analysis from agencies.

Loper Bright Enterprises v. Raimondo: Addressed Chevron deference. Federal courts cannot defer to agencies on questions of law.

SEC v. Jarkesy: The SEC cannot impose civil penalties without providing a jury trial. This ruling may affect other agencies seeking punitive remedies.

Loper Bright Enterprises v. Raimondo

Holding of the Case

Federal courts cannot defer to agencies on questions of law.

This ruling overruled Chevron v. APA.

Independent Judgment

Courts must exercise “independent judgment” and give a statute its “best meaning” rather than accepting “reasonable” agency interpretations.

Impact on Chevron Deference

The decision fundamentally changes Chevron deference, requiring courts to interpret laws independently without relying on agency expertise.

SEC v. Jarkesy

Ruling on Civil Penalties

The SEC cannot impose civil penalties for securities fraud without giving a defendant access to a jury. This ruling could affect other agencies seeking punitive remedies.

Broader Rulings by the Fifth Circuit

The court left in place rulings that ALJs were invalidly appointed under Article II and that nondelegation principles could impact more agencies.

Impact on Other Agencies

The decision signals that agencies may face similar restrictions, requiring jury trials for certain penalties and re-evaluating the appointment of ALJs.

Ohio v. EPA

Court's Decision

The court held that an agency acts arbitrarily and capriciously when it ignores or “sidesteps” important issues raised during the public-comment process.

Existing Standards

On its face, the court applied existing standards. But in context, the Court signaled that courts should closely examine agency explanations.

Impact on Regulation

Requiring more complete analysis will make it harder for agencies to regulate at all.

Corner Post Inc. v. Board of Governors of the Federal Reserve

Ruling on APA Statute of Limitations

The APA's six-year statute of limitations runs from the date the plaintiff is injured, not the date the rule is published. Formally, the decision applied traditional rules about when a cause of action "accrues" (the word used in the APA).

Implications of the Ruling

Practically, this expands the window to file APA claims indefinitely. This is a significant shift as previously, the statute of limitations was more restrictive.

Impact on Labor and Employment Law

By extending the time frame for filing claims, this ruling could lead to an increase in litigation related to labor and employment regulations, potentially causing delays and increased scrutiny on regulatory agencies.

How will these cases affect labor and employment law?



Rules in danger

NLRB joint-employer rule

DOL independent-contractor rule

DOL salary-basis rule (overtime exemptions)

DOL Davis-Bacon Act rule

FTC noncompete rule

OSHA walk-around rule

EEOC pregnancy-accommodation rule

Other interpretations in danger

Expanded bargaining orders (Cemex Construction)

Expanded labor-law remedies (Thryv Inc.)

Nondisparagement and nondisclosure agreements (McLaren
McComb)

New worker-classification standard under NLRA (Atlanta Opera)

Structural challenges to agencies

Unconstitutional Remedies

Agencies like the DOL and NLRB may face challenges over remedies imposed through administrative processes. These remedies could be deemed unconstitutional, affecting their enforcement capabilities.






Improper Appointment of ALJs

Issues may arise regarding the appointment of Administrative Law Judges (ALJs) in the DOL and NLRB. If appointments are found improper, it could invalidate many rulings and decisions.

Improper Adjudication of Private Rights

Agencies such as the NLRB and OSHA might be scrutinized for improperly adjudicating private rights. This could limit their ability to enforce regulations and protect workers effectively.

How will agencies react?

-  More informal guidance
-  Less rulemaking
-  Fewer big swings
-  More strategic litigation
-  More policies left to the states

What to watch for?



Early results in independent-contractor, noncompete, and salary-basis lawsuits



New lawsuits filed to challenge agency structures

SpaceX v. NLRB
Energy Transfer LP v. NLRB
Multiple challenges to DOL ALJs



New theories

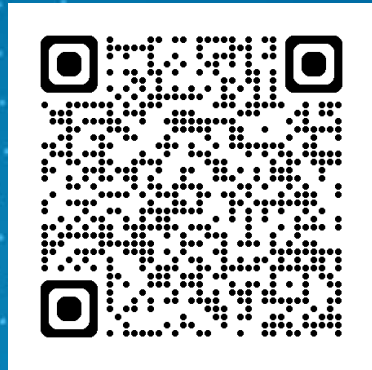
Due Process?
First Amendment?

Questions?

Please add any additional questions to the Q&A box

Thank you!

Alex MacDonald



Michael Lotito

