



# We Won't Have To Wait Very Much Longer For Final Gig Economy Rule

Insights

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The Department of Labor has turned down Congressional calls to extend the time period to receive public comments about the proposed independent contractor rule that would make it easier for gig economy businesses and other hiring entities to avoid federal misclassification claims. Yesterday's announcement means that the agency remains on track to close the comment period on October 26, with a final rule to be released soon thereafter.

In an October 19 letter sent by Joe Wheeler, Deputy Assistant Secretary in the Department of Labor, to Rep. Bobby Scott (D-VA), Chairman of the House Committee on Education and Labor, the agency rejected Congress' request to extend the comment period by at least 30 additional days. While certain House members wanted stakeholders to have adequate time to fully comment, "the Department has determined that 30 days is a sufficient period of time to comment, and therefore will not extend the comment period."

The DOL official noted that workers and businesses who want to receive assurances that their business relationships are properly classified face a daunting and uncertain road. They are currently required to locate fact-specific court decisions or sub-regulatory guidance when attempting to determine whether the facts of certain work arrangements are sufficiently comparable to their own – which is less than an ideal situation. "The lack of regulatory guidance underscores the need for an expedient rulemaking," wrote Wheeler.

In addressing concerns that the shortened window of time will not allow for adequate regulatory processing, Wheeler also noted that the Labor Department "takes seriously its obligation under the Administrative Procedures Act to consider any written data, views, or arguments submitted by commenters."

As we predicted in our alert on the subject, it seems near-certain that worker-advocacy groups and state attorneys general will launch court challenges against the proposal in an effort to block implementation. This is especially true given the accelerated process that led this proposed rule to be fast-tracked and unveiled so quickly. If just one federal judge agrees with those challenging the proposal, the rule could be stalled past Election Day. And if a new administration takes control of the White House, the fate of this proposed rule would be uncertain at best. We'll keep you updated as this rule progresses down the necessary administrative channels.

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