



Businesses Could Get Gift Of Gig Economy Rule Under The Christmas Tree This Year

Insights

12.17.20

With only a few weeks left in 2020 and a new administration set to take control of the Department of Labor a few weeks later, companies that rely upon a gig economy business model may be in store for a nice gift this Christmas season. According to [Ben Penn](#) and [Bloomberg News](#), the Labor Department is planning on releasing [its final misclassification rule](#) – that will make it easier to categorize workers as independent contractors – before Christmas. Under this schedule, it will be set to take effect two months later. By then, however, there will be new leadership in the White House and at the Labor Department. Will that changeover mean that this gift for businesses will eventually turn into a lump of coal?

We've known now for several months that the Labor Department is prioritizing this rule being finished before the end of the year, going so far as to shorten the typical notice-and-comment period in hopes of pushing the rule forward before current leadership is supplanted. Now that sources have revealed a Yuletide target date for the final rule to be released, we have a good sense of the agency's timing goal. Penn notes, however, that the final rule could be delayed by "review from the White House Office of Information and Regulatory Affairs," which is required step before the agency can release the finalized rule. The White House seems preoccupied these days with pandemic issues, a new relief bill being negotiated, the vaccine roll-out, and other issues, so we can't yet predict whether businesses will experience a Christmas miracle or wake up disappointed when they look under the tree on the morning of the 25th.

As we've noted before, however, this rule is almost certain to be challenged by worker advocates and unions (and perhaps even a collection of state attorneys general), regardless of whether it is timely released or includes an implementation date before Inauguration Day 2021. In other words, the incoming Biden administration will have a lot to say about whether this rule will ever take effect. However, as noted by Penn, if the Biden administration suspends the rule and blocks it from taking effect as planned, we could see business groups line up to file their own litigation in the hopes of resurrecting the rule. This has happened before: several years ago, after the Obama administration finalized a pay data collection rule and the Trump administration blocked it before it could take effect, a consortium of supporters filed suit and convinced a court to breathe new life into the rule and order it into effect. Could a similar dynamic take place with this gig economy rule? We'll keep track and provide updates throughout this holiday season and beyond.

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