



# Biden's Ambitious Plan To Take On The Gig Economy May Run Into An Unlikely Snag: His Own Party

Insights

1.28.21

Joe Biden made no secret about his position on the gig economy when he was in campaign mode. “Employer misclassification of ‘gig economy’ workers as independent contractors deprives these workers of legally mandated benefits and protections,” his campaign [website](#) said. “This epidemic of misclassification is made possible by ambiguous legal tests that give too much discretion to employers, too little protection to workers, and too little direction to government agencies and courts.” And the first few steps he has taken since assuming office have demonstrated that he’s serious about taking on gig businesses: mere hours after being sworn in, [he froze the Labor Department rule](#) that was about to make it easier to classify workers as contractors. Not to mention that [he nominated Marty Walsh to the top position at the Labor Department](#), a staunch union advocate who will no doubt take up Biden’s charge to render it even harder for gig economy companies and other businesses to retain independent contractors. But when it comes to Biden’s loftiest ambition in this arena – passage of federal legislation to ensure as many gig economy workers as possible are classified as employees – he may run into an expected roadblock: his own party.

As most know by now, the Democrats control the White House, the House, and the Senate for the first time in a decade. But their narrow margin of control in the House (222-211, with several seats currently vacant) and their razor-thin majority in the Senate (50-50 tie, with Vice President Kamala Harris casting any tie-breaking votes) means that Biden may not be able to push through major pieces of legislation without Republican support. That’s because most legislation could be subject to the 60-vote filibuster rule, allowing Republicans to block critical proposals. And even if the legislation is couched as being part of the budget reconciliation process – thereby skirting the filibuster rule and only needing a 50-vote majority – recent signals indicate that centrist Democrats may not be willing to tackle gig economy issues through sweeping progressive legislation.

What’s the legislation we’re referring to? [The PRO Act](#), as proposed, would essentially create a [national ABC test](#) to govern the classification standards throughout the country. But [as the Washington Post recently reported](#), the question as to whether to pass a law enacting the ABC test as the law of the land “has the potential to be more divisive” than other bread-and-butter Democratic priorities (such as minimum wage hikes, worker safety initiatives, and typical union and worker advocate goals). One of the senators most likely to throw a monkey wrench into the works is Mark Warner (D-Va). A long-time admirer of the gig economy and frequent speaker on Future of

work topics, warner was quoted as striking a markedly different tone than Biden on this subject.

“We know that independent contractors are not all the same — some are misclassified or would prefer to be treated as full-time employees, while others genuinely prefer to be independent contractors and use this kind of work to supplement other employment. My position has simply been that a one-size-fits-all model that locks you into benefits with one employer might not work for everyone and, frankly, doesn’t work all that well right now for people that want to either try something new or start their own business. We should be testing different strategies at the local level and uncovering what works best for workers long-term.” This quote tells you all need to know about Warner’s stance on any national ABC test...he is definitely skeptical and could even be hostile to any efforts to usher in a restrictive test limiting contractor status.

There could be other likeminded Democratic senators who might agree with Warner (think Joe Manchin of WV, Krysten Sinema of AZ, Jon Tester of MO, Chris Coons of DE, and similar centrists) and could force Biden’s hand when it comes to sweeping legislative proposals. This is certainly an issue we’ll be keeping a close eye on as Congress gets to work responding to Biden’s ambitious agenda.

### ***Related People***



**Richard R. Meneghello**  
Chief Content Officer  
503.205.8044  
Email