



# White House Takes Next Step At Wiping Out Trump-Era Gig Economy Rule

Insights

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We knew it had been coming, but the Biden recently made it official: the Department of Labor announced it wants to rescind the gig economy rule that was originally crafted under President Trump's tenure and was about to make it far easier for businesses to classify their workers as independent contractors. In its place, the DOL will almost certainly aim to implement a new rule that would more closely align with the Biden administration's aim to target misclassification and ensure as many workers as possible are considered employees.

## No Surprise

The announcement came on the same day that the DOL announced it would overhaul the joint employment rule and was a surprise to no one. After all, President Biden expressed during his campaign his admiration for California's "clear, simple, and strong" three-prong "ABC test" to distinguish employees from independent contractors. He also promised to work with Congress to establish a federal standard modeled on the ABC test for all labor, employment, and tax laws (which could become federal law under the resurrected PRO Act). Moreover, he installed Marty Walsh – an avowed labor advocate – as his choice to lead the DOL, further cementing the idea that we would eventually see the Trump rule scrapped.

The rule was slated to ensure that the only workers classified as employees federal wage and hour law would be those economically dependent on a hiring entity for work, using a five-factor test to make this determination. The two most critical factors that would have been examined were whether the individual **controlled** their work and whether they had an opportunity to impact their own **profit and loss**. The effective date of the proposed rule was originally slated to be March 8, but the DOL first announced a 60-day regulatory freeze shortly after Biden took the reins.

## DOL Announces A New Day Has Arrived

"While legitimate independent contractors are an important part of our economy, the misclassification of employees as independent contractors denies workers access to critical benefits and protections the law provides," a DOL official stated in an announcement that accompanied the March 11 release. The announcement also noted that the Trump-era rule was inconsistent with standards set by the Supreme Court and the overall purpose of federal wage and hour law.

The agency announced that it would accept public comments about the rule through April 12. After that time, we can expect the agency to formally propose a new standard that will complete the U-turn from the Trump rule and seek to install the test as the law of the land. We can assume that business advocacy groups and perhaps some business-friendly state attorneys general may initiate litigation at some point in an effort to force the Trump-era rule into place, but the momentum has clearly shifted from where we stood just a few months ago. We'll continue to review the status of this development and provide updates as warranted.

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