



White House's Labor Task Force Takes Aim at Gig Economy in New Report

Insights

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The White House's labor task force released a highly anticipated report on Monday as the next step in its long-term plan to "encourage worker organizing and collective bargaining" – and one section of the report takes square aim at the gig economy. The report asks the U.S. Department of Labor (DOL) to do what it can to prevent workers from being "misclassified" as independent contractors, part of what Reuters calls "a long-running battle for the Labor Department with companies that rely on so-called gig economy workers." Although the "gig economy" is not specifically mentioned in the report, no doubt that this industry will be impacted by any direct action items that may result from this report.

Background

President Biden issued an Executive Order in April 2021 creating a labor task force designed to "encourage worker organizing and collective bargaining." Headed by Vice President Harris, the task force also includes cabinet members such as Labor Secretary Marty Walsh (vice-chair) and Treasury Secretary Janet L. Yellen. It was seen by many as a step toward following up on President Biden's promise to be "the most pro-union president you've ever seen."

In the Executive Order, President Biden directed the task force to "identify executive branch policies, practices, and programs that could be used, consistent with applicable law, to promote the Biden Administration's policy of support for worker power, worker organizing, and collective bargaining." This includes identifying policies and practices that could be used to promote worker power in areas of the country with what the administration perceives as "hostile labor laws."

"Prevent and Address Worker Misclassification"

Tucked away in the 43-page report is a recommendation that the DOL "continue to prioritize action to prevent and remedy the misclassification of workers as independent contractors." It provides a four-step plan to achieve this goal:

1. rigorous enforcement;
2. partnerships with other relevant federal and state agencies, such as the Internal Revenue Service and the Department of Transportation (which sounds similar to the recent coordination memo released by the DOL and the NLRB).

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3. guidance, rules and/or education for employers and workers, as needed; and
4. robust outreach to workers, employers, unions, and worker advocates.

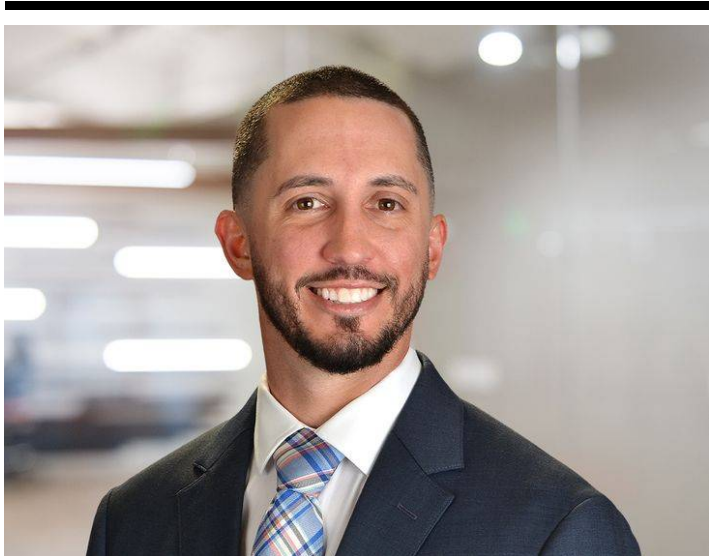
It notes that the practice of misclassification undermines workers' union organizing rights because employers that misclassify workers as independent contractors "typically do not consider them to be employees under the National Labor Relations Act."

What's Next?

Of course, ridding the workforce of true misclassification is a laudable goal. However, the concern of most in the business community is that the current administration takes an overly expansive view about which workers should be considered employees. The president and the top official at the DOL have both publicly made statements to this effect, each targeting the gig economy as an area where the classification rules should be broadened to transform as many workers to employees as possible. The coming months will be of great interest to gig economy businesses as we await to see the development of policy (if any) springing from these recommendations.

We will continue to monitor this situation as it unfolds. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Labor Relations group or Gig Economy Practice Group.

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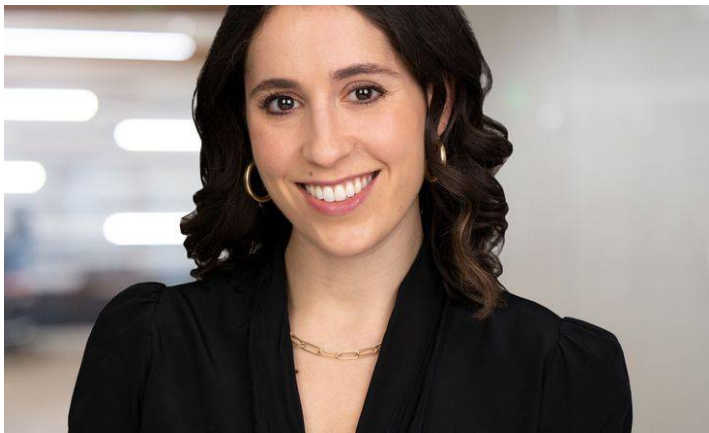
Alex G. Desrosiers

Partner

407.541.0857

Email





Ariella Kupetz

Associate

213.402.9564

Email



Lauren Roseman

Partner

949.798.2187

Email

Service Focus

Labor Relations