

# Is the USDOL Making it Easier for On-Demand Workers to Claim Misclassification?

Insights

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The on-demand economy has certainly changed the way people provide and receive services. It may also be changing the way the government focuses its enforcement priorities.

The U.S. Department of Labor (USDOL) issued regulations last summer which required businesses to post revised workplace posters, including one for “Employee Rights Under The Fair Labor Standards Act.” For the first time, the poster includes a section advising workers about independent contractor misclassification. Specifically, the poster informs workers that it is important to know the difference between being an employee and being a contractor “because employees (unless exempt) are entitled to the FLSA’s minimum wage and overtime pay protections.”

While it is probable that the revisions to the poster are intended to educate workers at a wide variety of “traditional” workplaces, it is also likely that the language will be read by many on-demand workers who may decide to test their independent contractor classification by filing legal actions.

Further, in December 2016, the USDOL also created a “misclassification” page on their website to provide information about the issue and what workers can do if they believe they have been misclassified. The website states in large letters that: “‘Misclassification’ refers to a worker who is an employee under the law but is incorrectly classified as something other than an employee (usually an independent contractor). Most federal and state labor laws protect workers who meet the laws’ definitions of ‘employee.’”

It even provides videos to more plainly explain the differences between independent contractors and employees, and a “how to file a complaint” link. The end result of this information will likely be to create an easier path for workers who believe they have been misclassified to seek relief.

The on-demand economy should keep abreast of these developments, as they highlight the need for businesses to carefully review whether they are complying with all applicable workplace laws.

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