



# Department Of Labor Says Certain Gig Workers Are Contractors

Insights

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In a major positive development for gig economy businesses, the U.S. Department of Labor today issued an opinion letter today confirming that certain workers providing workers for a virtual marketplace company are, indeed, independent contractors. While this letter can only be used as an authoritative legal defense by the specific (unnamed) gig economy business that requested the letter, this publication still provides the federal government's official interpretation on whether a certain business model or practice complies with the law. We now have a solid understanding of how the current USDOL views the misclassification question and will approach it from an enforcement perspective, and the news is all good for gig businesses.

## **Brief Factual Background**

The identity of the gig economy business that requested the letter is unknown (as the USDOL removed the actual name to protect the entity's privacy), but what we do know paints the picture of your average modern gig business. The business is a "virtual marketplace company" that operates in the "on-demand" or "sharing" economy. Generally, it is an online and/or smartphone-based referral service that connects service providers to end-market consumers. Although we don't know what service is provided by this specific entity, we can assume they provide a service typical of the gig industry: transportation, delivery, shopping, moving, cleaning, plumbing, painting, or household services. It accomplishes this through a typical analytic hierarchy process software platform, using objective criteria to match consumers to service providers.

Like virtually all gig economy businesses, this particular company was concerned about the risks of a misclassification claim that might lead to wage and hour liability under the Fair Labor Standards Act (FLSA). It asked the agency to provide a determination about whether the workers that provide these services would be considered employees or independent contractors if challenged under the current state of the law. The USDOL concluded that, assuming all the facts provided by the entity were accurate, the workers are contractors and not employees.

Read the full article on [Fisher Phillips website](#).

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