



Labor Department Faces Blowback After Gig Economy Opinion Letter

Insights

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According to Bloomberg Law's weekly "[Punching In](#)" column (an absolute must-read each week) that published today, some congressional leaders are not too pleased with the Labor Department after it published an opinion letter a few weeks ago confirming that certain workers for an unnamed gig economy company were properly classified as independent contractors. [As we wrote about back on April 29](#) when the opinion letter was released, that letter offered up the federal government's official interpretation on whether a certain business model or practice complies with the law, providing us with a solid understanding of how the current USDOL views the misclassification question and will approach it from an enforcement perspective. And the news was very good for gig businesses: "while not a magic bullet that will cure all that ails the modern gig economy industry, [the] development is a welcome one—and a preview as to how today's USDOL will treat misclassification concerns that fall into their laps from gig economy (and other) businesses," [we said at the time](#).

[Bloomberg's Jaclyn Diaz](#) writes that the letter has "raised [the] ire" of congressional Democrats. She cites to a [May 14 letter](#) sent to Labor Secretary Alexander Acosta by Representative Rosa DeLauro (D-Conn.), chair of the House Labor Appropriations subcommittee, and Senator Sherrod Brown (D-Ohio), ranking member of the Committee on Banking, Housing, and Urban Affairs, where they indicated they were "extremely disappointed" with what they labeled an "unfortunate" opinion letter. They characterized the letter as "set[ting] policy" instead of simply offering advice to a specific situation. "In our view," they said, "this is an unsettled and contentious statutory and regulatory area that requires a more thoughtful and prudent approach." They then posed a series of 14 questions to Secretary Acosta they want answered about the opinion letter, including why this company was chosen, why the public announcement that accompanied the letter implied that its contents reflect a larger policy statement rather than case-specific guidance, and what regulatory authority was being used in order to issue the letter.

[As Diaz notes](#), "Acosta previously has argued that policy changes should be done through regulations rather than subregulatory actions like administrative interpretations," and reminded us that Acosta has previously indicated that "the department would tackle worker classification via regulation after joint employment." Now that the USDOL has begun the process of [issuing new regulations on joint employment](#), perhaps we will soon see the agency fulfill this promise. It would certainly be a welcome development if the agency began work on creating a sweeping regulatory

framework to aid gig economy companies in adopting consistent workplace practices that can assure them of contractor relationships while reducing the chances of a misclassification conflict.

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