



Written by [David Kelly](#) on January 10, 2024

Biden Administration Issues Rule Affecting ‘Gig’ Work, Independent Contracting

The U.S. Department of Labor (DOL) on Tuesday issued a [final rule](#) that could affect millions of contract workers in industries such as trucking, manufacturing, healthcare, and app-based “gig” services, requiring them to now be considered employees rather than independent contractors.

The new rule, which will go into effect in March, imposes a strict test to determine whether companies can classify their workers as independent contractors. According to the [DOL](#), the rule rescinds a Trump era labor rule ([2021 \[Independent Contractor\] Rule](#)) and “replaces it with an analysis for determining employee or independent contractor status that is more consistent with the FLSA [Fair Labor Standards Act] as interpreted by longstanding judicial precedent.”



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“Misclassifying employees as independent contractors is a serious issue that deprives workers of basic rights and protections,” explained Acting Secretary of Labor Julie Su in a [press release](#). “This rule will help protect workers, especially those facing the greatest risk of exploitation, by making sure they are classified properly and that they receive the wages they’ve earned.”

The DOL stated in a [blog post](#) that the new rule revises the department’s guidance by:

- Returning to the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA.
- Explaining that all factors are analyzed without assigning a predetermined weight to a particular factor or set of factors.
- Using the longstanding interpretation of the economic reality factors. These factors include opportunity for profit or loss depending on managerial skill, investments by the worker and the potential employer, the degree of permanence of the work relationship, the nature and degree of control, the extent to which the work performed is an integral part of ... the potential employer’s business, and the worker’s skill and initiative.

American Trucking Associations President and CEO Chris Spear opposed the new rule, stating in a [press release](#):

I can think of nothing more un-American than for the government to extinguish the freedom of individuals to choose work arrangements that suit their needs and fulfill their ambitions. More than 350,000 truckers choose to work as independent contractors because of the economic opportunity it creates and the flexibility it provides, enabling them to run their



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own business and choose their own hours and routes. That freedom of choice has been an enormous source of empowerment for women, minorities, and immigrants pursuing the American Dream.

The coordinated release of this rule with the renomination of Julie Su to lead the Department of Labor is proof positive that the Administration is doubling down on destructive policies that eliminate choice and opportunity for our workforce.

Uber, an app-based company, said in a [statement](#) that the new rule will not impact the classification of the more than 1 million Americans who drive for the company.

“Drivers across the country have made it overwhelmingly clear — in their comments on this rule and in [survey](#) after [survey](#) — that they do not want to lose the unique independence they enjoy,” said CR Wooters, head of federal affairs at Uber. “As this rule is implemented, we look forward to working with the Biden administration and making sure they continue to hear directly from drivers.”

Reuters [reported](#) that the new rule “does not go as far as wage laws in California and other states that place even greater limitations on independent contracting.” California’s [AB5](#) requires companies to reclassify some gig workers as employees using a three-pronged test to prove independence. That law took effect in 2020, and [reportedly](#) “imposes a higher bar to show that workers are independent contractors rather than employees, who have greater legal protections and can cost companies up to 30% more.”

The U.S. Chamber of Commerce [challenged](#) the final rule, stating it is “clearly biased towards declaring most independent contractors as employees, a move that will decrease flexibility and opportunity and result in lost earning opportunities for millions of Americans. It threatens the flexibility of individuals to work when and how they want and could have significant negative impacts on our economy.”

“Making matters worse, the rule is completely unnecessary, as the Department continues to report success in cracking down on bad actors that are misclassifying workers,” Marc Freedman, vice president at the U.S. Chamber of Commerce, said in the [statement](#). The [Chamber](#), “the world’s largest business organization,” will carefully evaluate their options going forward, including challenging the rule in court.



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