

DOL Rulemaking has Broad Implications for the Gig Economy

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by Troy M. Keller



On February 26, 2026, the Department of Labor (DOL) announced a [Notice of Proposed Rulemaking](#) regarding worker classification. It may feel like another policy swing from administration to administration. However, this proposal is the latest development in long-running debate with consequences for the gig economy and the

employer-worker relationship. It is a debate that could be existential for some businesses.

The DOL History

In 2021, the DOL introduced a rule that prioritized core factors of "*control*" and "*opportunity for profit or loss*" on the part of the worker. This was a welcome development for businesses by giving them a simpler test that was consistent with many state common law approaches.

In 2024, the Biden Administration rescinded the 2021 rule and replaced it with a "*totality-of-the-circumstances*" test that looked at six different factors, with none weighted more heavily than another. This was perceived as creating risk around most independent contractor relationships, as it gave regulators the ability to emphasize any factor if they saw a situation they didn't like. In May of last year, the Trump administration indicated they would largely [not follow the 2024 rule](#) when conducting investigations.

This newest DOL rule proposal would rescind the 2024 rule and return to the more streamlined framework previously seen in 2021. This signals a return to the economic reality test used by courts over the years to determine if a worker is independent or is economically dependent on an employer.

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The back and forth at the DOL is just one front where the worker classification battle is playing out. The policy debate has also been active among legislative bodies, both state and federal. For many years, the PRO Act (Protecting the Right to Organize Act) has been promoted by labor advocates seeking to codify the ABC test adopted by some states. That test would presume a worker is an employee unless certain criteria can be shown.

From the other direction, Utah Senator Mike Lee introduced the 21st Century Worker Act in 2023, which would create a national standard for independent contractors in line with the economic realities test. More recently, in September 2025, the House Committee on Education & the Workforce passed the Direct Seller and Real Estate Harmonization Act to align federal law with tax rules that have historically recognized direct sellers and real estate agents as independent contractors.

In a creative step, states like Utah, Alabama and Tennessee have adopted legislation that would allow companies to contribute to portable benefit plans for contractors without those contributions being used against them as evidence of an employment relationship. This has inspired similar safe harbor proposals in Congress in both the House and the Senate.

Real World Impacts

The lack of clear rules regarding worker classification questions, not to mention the patchwork of standards, has led to real pain points for businesses. We see it in the surge of plaintiff litigation in recent years surrounding worker classification and wages and earnings claims. We also see it regularly in corporate transactions where any historical use of independent contractors is closely scrutinized during due diligence, frequently materializing as contingent liabilities that can spook acquirers, underwriters, or R&W insurance providers. This can lead to friction in the deal-making process as the parties seek to quantify exposure and negotiate protections.

These issues are ongoing and in many cases an unnecessary burden on business. However, for industries that are heavily reliant on independent contractor classification, such as direct selling, real estate brokerages, or rideshare platforms, the debate can be existential. Gig economy business models that were built around independent contractors likely do not survive if the classification requirements become overly restrictive.

What Next

Even though the new DOL rulemaking proposal is just part of a larger debate, the open comment period (closing April 28, 2026) will draw arguments and feedback from a range of interested parties. It will be an important debate for businesses to monitor. Companies and industry groups may also consider the opportunity to comment on the rulemaking in order to share the effects on the ecosystems they participate in.

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