



2021 Wage and Hour Update

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1

The Department of Labor



- Marty Walsh confirmed as Secretary of Labor
 - Former Massachusetts State Representative
 - Former union representative
- Jessica Looman appointed as Principal Deputy Administrator for W&H Division
- Enforcement priorities:
 - Joint employment
 - Independent contractor misclassification
 - Agency staffing



2

The Gig Contractor Rule



- Issued by Trump DOL in January 2021.
 - Would have elevated two factors of economic realities test:
 - Nature and degree of control over the work; and
 - The worker's opportunity for profit or loss.
- May 5, 2021 – Biden DOL rescinds prior rule; reiterates that DOL will consider all economic reality factors.

3

Tip Rules



- Issued by Trump DOL in December 2020.
 - Allowed inclusion of more employees in tip pools (provided that employer does not take a tip credit).
 - Eliminated the "80/20" rule for tip credits.
- On pause until December 2021 (and perhaps indefinitely).

4

Joint Employment



- Trump DOL issued joint employment rule last year.
 - Narrowed the circumstances where two entities might be found to be the employer of a single worker.
 - Largely vacated by the Southern District of NY; on appeal to the Second Circuit.
- March 2021 – Biden DOL proposes rescinding joint employment rule.
- Unclear whether a new rule will be issued.

5

Minimum Wage



- Federal \$15/hour minimum wage is in the news again.
- Initially proposed as part of Biden stimulus package.
- \$15/hour minimum wage faces an uncertain future in Congress.

6

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