



# 2021 Wage and Hour Update

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## 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



# 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.

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## 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).

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# 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.

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# 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.

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First appeared as part of the conference materials for the  
28<sup>th</sup> Annual Labor and Employment Law Conference session  
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