



# POLICY SPOTLIGHT

The New DOL Rule for Independent Contractors

LIYA PALAGASHVILI | MAY 2024

More than one-third of Americans now earn income through some form of independent contracting or “gig” work. Such work is at an all-time high: For some individuals it provides supplemental income to help meet their financial needs. In other cases it provides job opportunities for those who might otherwise have remained outside the workforce. But the Department of Labor (DOL) has just implemented a rule that threatens the future of independent contracting. As lawmakers across the country consider taking similar steps, research from the Mercatus Center highlights the dangers of the new DOL rule and its likely negative consequences for the workers who will be affected by the rule. Mercatus is also showing what government *can* do to better accommodate workers who desire to continue as independent contractors.

## **The DOL Needs to Consider Likely Costs, Not Just Potential Benefits**

The DOL rule adds new considerations that limit the circumstances under which workers can legally be classified as “independent contractors,” making it a stricter rule than it was under both the Trump and Obama administrations. To what end? To encourage employers to hire such workers as traditional “W-2” employees thereby granting them the work-related benefits and protections traditional employees enjoy.

But a more pertinent question is the following: How many independent contractors affected by the rule will actually become full-time employees? And there is another question: How many of these independent contractors will simply lose their contracting opportunities instead?

The Department of Labor has failed to properly address these issues. Rather, it merely assumes—without providing supporting evidence—that the new rule will lead to zero job losses and zero costs. But evidence does exist, and it suggests just the opposite: California’s recent experience reclassifying workers shows that far from benefiting independent contractors, the new DOL rule will harm the very workers it seeks to protect.

## **California Has Implemented a Similar Policy—with Disastrous Results**

California’s Assembly Bill 5 (AB5) is the country’s strictest law for classifying a worker as an independent contractor rather than an employee. But the law did not simply alter the composition of the workforce in the way policymakers intended. After California

adopted AB5, self-employment and overall employment for affected occupations declined:

- On average, 1 in 10 individuals may have lost self-employment opportunities in affected occupations.
- There is no consistent evidence that W-2 employment rose after AB5 was implemented; even in cases where W-2 employment rose, the increase was not large enough to offset the decrease in self-employment.
- In practice, AB5 illegalized much of the existing legitimate contracting work, so workers lost their jobs; most of them did not, in fact, become employees.

### **What Independent Contractors Want: Flexible Benefits for a Flexible Workforce**

The vast majority of independent contractors (79 percent) would prefer to keep their flexible work arrangements and not have to switch to full-time employment. Further, most would like to have access to flexible or portable benefits—that is, benefits that are not tied to a particular job or employer but travel with the worker.

These two labor market realities suggest there is a better, more innovative way forward in this vitally important policy area. Instead of seeking to reclassify independent contractors as employees, government can support these workers by allowing them the option to access flexible benefits. Doing so would offer workers the best of both worlds—flexibility plus benefits—and better equip them to seize more opportunities in a dynamic and evolving economy.

### **Further Reading**

Liya Palagashvili, “App-Based Workers Want to Keep Their Gigs—and Gain Flexible Benefits” (Testimony before the Commonwealth of Massachusetts Special Joint Committee on Initiative Petitions, Mercatus Center at George Mason University, Arlington, VA, March 19, 2024).

Liya Palagashvili, “An Ill-Advised New Policy for Contractors Gambles with American Livelihood,” *The Hill*, March 15, 2024.

Liya Palagashvili, “Everything You Need to Know about the Department of Labor Independent Contractor Rule,” *Labor Market Matters*, March 11, 2024.

Liya Palagashvili, “Let’s Address the Real Challenges for Independent Contractors and Gig Workers,” *Labor Market Matters*, February 1, 2024.

Liya Palagashvili et al., “Assessing the Impact of Worker Reclassification: Employment Outcomes Post-California AB5” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 31, 2024).

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