

The Undoing Of Biden's Wage-Hour Legacy Has Begun

By **Max Kutner**

Law360 (May 8, 2025, 8:14 PM EDT) -- Wage and hour rules issued under former President Joe Biden are already on the chopping block just more than 100 days into President Donald Trump's second term, as the U.S. Department of Labor halts enforcement of independent contractor and federal contractor minimum wage requirements



Among other moves, President Donald Trump revoked an executive order from former President Joe Biden, pictured, that paved the way for a \$15 hourly minimum wage for federal contract workers, and the DOL said it would not enforce a Biden-era rule based on that order. (AP Photo/Morry Gash)

The DOL issued a field assistance bulletin May 1 instructing its Wage and Hour Division field staff to **no longer follow** an independent contractor analysis from a Biden-era rule that has been the subject of litigation. A day later, the DOL brought back an opinion letter from 2019, when Trump was first in office, that laid out a different independent contractor analysis.

Previously, in March, **Trump revoked** a Biden executive order that paved the way for a \$15 hourly minimum wage for federal contract workers, and the DOL subsequently said it would not enforce a Biden-era rule based on that order.

And a Biden-era rule that raised the salary threshold for overtime exemptions is also expected to go, after a Texas federal court invalidated the rule in November and the Trump administration told the Fifth Circuit it is deciding what to do about it.

"These are issues that obviously affect a wide swath of the population and had been talked about even before [Trump's] administration started," said Thomas Spiggle of the Spiggle Law Firm, who represents workers.

Here, Law360 explores the status of three Biden-era rules.

Independent Contractors

The Biden DOL acted quickly to undo the first Trump administration's independent contractor regulation **by proposing** a rescission rule, whereas the current Trump administration has done so through subregulatory guidance.

The Biden-era rule established a six-factor test for determining whether a worker is an employee or independent contractor, while the Trump rule focused more narrowly on two factors.

Independent contractors often lack benefits and protections mandated for employees, such as minimum wage and overtime pay.

The **Biden-era independent contractor rule** is technically still in place. However, the DOL in recent weeks **has asked** federal courts to hold cases challenging it in abeyance due to "the agency's reconsideration and potential rescission of the rule."

But after at least one court **granted such a request**, the DOL on May 1 issued the field assistance bulletin and on May 2 brought back the 2019 opinion letter.

Richard Reibstein, co-head of the independent contractor compliance and misclassification practice at management-side firm Troutman Pepper Locke LLP, said the back-and-forth impacts internal DOL enforcement but not worker-filed litigation.

"The back-and-forth between competing administration departments of Labor is mostly a distraction," Reibstein said.

Even for federal enforcement, the return to the original Trump-era standard might not change much, Reibstein added.

"This modification might apply to those cases that are in the gray area, where a slight change to the regulation might impact what the Department of Labor does or doesn't do in terms of enforcement," he said. "But most of the cases are not in the gray area."

Noah Finkel of Seyfarth Shaw LLP, who represents companies, said DOL independent contractor interpretations are a fairly modern phenomenon and that courts have reached their own conclusions.

The DOL interpretations have shifted "in the face of case law established in the various circuits that contain definitions of who's an employee and who's an independent contractor," he said. "In this day and age of how courts are less frequently deferring to administrative agencies, I have to think that courts are going to be using their own definitions."

Meanwhile, there are additional considerations for independent contractor classification besides the federal standard, said Shahed Abualsamen of management-side firm Thompson Coburn LLP.

"There are state and even local rules, as well, [that] employers need to keep in mind," she said, adding that it is a "very tricky landscape."

Minimum Wage for Federal Contract Workers

Another Biden-era rule that the Trump administration has said it will no longer enforce is one **that raised** the minimum wage for federal contract workers to \$15 an hour. This stemmed from a Biden executive order, No. 14026.

After Trump issued his own executive order in March rescinding Biden's, the DOL said it would no longer enforce the rule. Attorneys said an hourly rate from former President Barack Obama's administration would now appear to be in place, a figure that would be \$13.30.

The Ninth Circuit **invalidated the rule** in November, and a rehearing petition is pending. The **Tenth** and **Fifth** circuits upheld the rule, but the latter **withdrew its opinion** in late March in light of Trump's executive order. The U.S. Supreme Court **declined to review** the Tenth Circuit decision in January.

As with the independent contractor rule, the DOL has not formally rescinded the minimum wage rule, though it has expressed its intention to do so.

"One of the negatives or downsides of trying to lock in a bunch of labor protections through executive presidential actions is they can be undone without a lot of fanfare," said Samantha Sanders, director of government affairs and advocacy at the left-leaning Economic Policy Institute.

Proceeding without a formal recission process "does not provide maybe the certainty that everyone would be looking for in the regulated community," said Sanders, who was a policy adviser at the Wage and Hour Division under Obama.

Federal contractors now might have to decide whether to pay workers a lower rate, said Eric Leonard of Cozen O'Connor, who represents government contractors.

"An employer could lower certain wages for folks that were initially covered by the federal contractor minimum wage," he said. "That might be challenging from an employee retention and relation standpoint."

Contractors should also keep in mind other wage requirements, such as local and state floors and prevailing wages under the Davis-Bacon and Related Acts and the Service Contract Act, Leonard said.

"It can be a challenge for companies to try to figure out exactly what now governs their minimum pay standards, particularly ones that are trying to put together proposals now," he said.

Overtime

One more Biden-era regulation that faces an uncertain future **raised the** salary threshold for exemptions to overtime requirements under the Fair Labor Standards Act.

The DOL stopped enforcing that rule before Biden left office, after a Texas federal court **invalidated it** in November. The Biden DOL filed for appeal, and on April 29, the Fifth Circuit agreed to the agency's request to stay proceedings pending reconsideration of the rule.

In the meantime, the DOL says on its website that it is enforcing a threshold the previous Trump administration set, which is the equivalent of \$35,568 per year, compared to the Biden rate of \$58,656.

"If I'm a worker, sadly, it's going to go back to that [2019] threshold," said Spiggle, the worker-side attorney. "This is not great news for workers."

Seyfarth's Finkel said it's possible the DOL will update the 2019 threshold, given that it did so after a Texas federal court invalidated an Obama-era overtime rule. The tossing of that rule left in place one from under former President George W. Bush.

Finkel said, "I suspect there's a good chance that that's what we see again."

--Editing by Abbie Sarfo.