

U.S. Department of Labor Five-Year Strategic Plan Targeting 'High-Risk' Industries to Improve Wage-and-Hour Law Compliance

Summary

Background

The U.S. Department of Labor (DOL) recently released its strategic plan for 2011–2016. The primary focus of this plan is to create “good jobs for everyone.” The DOL has outlined five specific goals to help achieve “good jobs.” With each goal, the DOL also has created evidence-based evaluations to determine the effectiveness of its efforts in achieving these goals. Below is a brief summary of the goals outlined in the DOL’s strategic plan, which provides guidance as to which industries will be targeted by the DOL in the next five years.

Goal No. 1: Prepare Workers for Good Jobs and Ensure Fair Compensation.

The DOL intends to increase focus on training programs and employment services for adults, dislocated workers, youth and “targeted populations,” such as older employees and veterans. The DOL will test and evaluate re-employment services, and will help to foster jobs in developing areas such as “green jobs” through job training and certification in energy efficiency, renewable energy, transportation, green construction, environmental protection, sustainable agriculture, forestry, recycling and waste reduction.

In addition to training, the DOL also will step up its enforcement activities to ensure fair compensation and employment opportunities for “vulnerable workers,” who are defined by the DOL as those employees who generally are paid less and unlikely to report violations due to fear of retaliation. The DOL emphasized that it will strictly enforce the Uniformed Services Employment and Re-employment Rights Act for veterans and more efficiently resolve discrimination cases.

It also explicitly stated that it will vigorously go after “misclassification” of employees in “fissured industries,” identified as those sectors that improperly classify employees as “independent contractors” and thereby deny employees necessary protections. Specific examples of high-risk, fissured industries on the DOL’s target list are agriculture, janitorial, home health care, professional and personal services, transportation, and hotel/motel. Notably, the DOL commented that studies indicated “[t]he construction industry, in particular...is rife with employee misclassification.” The DOL plans to utilize litigation strategies and penalty assessments in its goal to eradicate improper employee classifications.

Goal No. 2: Ensure Workplaces Are Safe and Healthy.

The DOL will target workplaces that are more hazardous than others and generally employ more vulnerable workers. The high-risk industries identified by the DOL include mine workers, agriculture, construction and those industries dealing with dangerous chemicals, such as hexavalent chromium. With regards to agriculture, the DOL plans to increase efforts in enforcing child labor laws, improve sanitary work conditions in the fields, as well as housing, and monitor compliance with H-2A visas for temporary workers.

Goal No. 3: Assure Fair and High Quality Work-Life Environments.

One of the key factors in achieving this goal for the DOL is breaking down barriers of discrimination in the workplace for minorities and the disabled. In order to do this, the DOL plans to aggressively investigate all discriminatory practices, monitor compliance with affirmative action programs for federal contractors, inform the most vulnerable workers in high-risk industries of their legal rights in the workplace and encourage such employees to report violations without fearing retaliation. The DOL is specifically targeting the mining and agriculture industry to make sure these generally low-paid employees are educated about their rights and that any reported violations are dealt with swiftly.

The DOL also will seek to encourage more flexible work schedules through outreach and education programs at state and local governments, and monitor the effectiveness of the recent military amendments to the Family Medical Leave Act (FMLA). Lastly, the DOL will encourage labor union transparency and more employee involvement in the administration of unions.

Goal No. 4: Secure Health Benefits and, for Those Not Working, Provide Income Security.

Given the strain on the unemployment insurance program due to the record number of employees applying for such benefits, the DOL is promoting legislation to provide states with tools to prevent and detect fraud, while also strengthening efforts to identify employers who have misclassified their employees as independent contractors. The DOL estimates that these efforts will reduce overpayments by \$2.6 billion, while increasing tax revenue by \$318 million. The DOL also will work toward streamlining the workers' compensation programs for federal workers to make sure benefits are provided on a timely basis, and ensure the safety of retirement accounts by strengthening the protections afforded under the Employment Retirement Income Security Act (ERISA).

Goal No. 5: Produce Timely and Accurate Data on the Economic Conditions of Workers and Their Families.

The DOL plans to achieve this goal by further supporting the U.S. Bureau of Labor Statistics to effectively research and report upon labor market activity, working conditions and the economy. The DOL will help the bureau to advertise its products, as well as make the data produced more accessible.

CalChamber Position

One of the repeated themes throughout the DOL's strategic plan is targeting high-risk, fissured industries to identify wage-and-hour violations, such as independent contractor misclassifications. The California Chamber of Commerce supports the DOL's focus to create "good jobs for everyone" by identifying and penalizing employers who deliberately evade their wage-and-hour responsibilities. The CalChamber is concerned, however, with specifically focusing on misclassification of "independent contractors" due to the continued failure by any state or federal agency to provide a clear, objective definition as to who qualifies as an independent contractor. The CalChamber supports any legislation or regulation that clarifies who may qualify as an independent contractor, yet does not discourage businesses' use of independent contractors.

Reasons for Position

- The current factors used to analyze whether an individual is an employee or independent contractor are too subjective, and can lead to conflicting determinations.
- Employers, who are acting in good faith by classifying individuals as independent contractors, could easily be penalized if the DOL or another government agency later determines the employer's classification was wrong.
- The DOL's zealous efforts to identify bad actors in its strategic plan could unfairly include those employers who are trying to comply in good faith with their wage-and-hour obligations.

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