

Biden Goes After Freelancers

The labor market is cooling while more Americans are using side hustles like driving for Uber in order to cope with rising prices due to inflation. Yet, now the Biden Administration is declaring war on the so-called gig economy and countless companies that utilize freelancers.

The Labor Department, on October 11, proposed a rule that aims to reclassify millions of independent contractors as employees. Approximately 20,000,000 Americans work as independent contractors, which have more autonomy than employees, and who can set their own hours and work for multiple companies at the same time.

But Progressive Democrats view these flexible arrangements as a burden and not a benefit. Independent contractors cannot unionize and are not covered by wage and overtime mandates. Unions, the major financial and organizing contributors to Democrats, want to force businesses to reclassify contractors as employees and then to unionize them and thus obtain more union dues.

The Fair Labor Standards Act defines an employee as “any individual employed by an employer.” The Supreme Court in a series of cases starting in the 1940s laid out a multiprong “economic reality” test that instructs courts and businesses to weigh many factors when determining whether workers are employees or contractors.

Different federal courts have placed different emphasis on different factors, which has resulted in confusion for companies, especially those that operate nationwide. The growth over the last decade of apps that offer flexible work arrangements, including in white collar fields such as document translation and consulting, has compounded the confusion.

The Trump Administration tried to clear up the mess with a rule that told the courts and companies to weigh foremost the nature and degree of a worker’s control and the opportunity for profit. This test enabled most independent contractors to remain so. The Biden proposal aims to replace the Trump rule with a “totality of the circumstances” analysis which focuses on whether workers are “economically independent upon an employer for work.”

Understand this standard, gig workers would probably have to be reclassified as payroll employees which would reduce worker flexibility and disrupt business models. This resulted in a reduction in the price of Uber and Lyft shares. The proposed rule has the potential to sweep broadly and could cover most areas of the economy.

Do you think this does not affect you; newspaper columnists, truck drivers, real estate agents, insurance agents, barbers, beauticians, consultants, and many other freelancers could be ensnared.

The Biden Administration is proving it is an equal opportunity jobs killer, but unions will be better off financially. *Wall Street Journal 10/12/22 p. A18.*

Court Orders Release of Testimony of Lois Lerner Regarding IRS Abuse

Did you remember that Lois Lerner, the former director of the Exempt Organizations Unit of the IRS, played a key role in the targeting of conservative non-profit groups and individuals and Israeli groups opposed to Obama policies in the run up to the 2012 election? She refused to testify before Congress and like Eric Holder, the Attorney General, was not prosecuted. It was hard to know what happened because the depositions of Lois Lerner and her chief aide were sealed in the lawsuit *NorCal Tea Party Patriots, et al v. The Internal Revenue Service et al*.

Lerner's and her aide's depositions were sealed by Judge Barrett (now on the Supreme Court) after Lerner's lawyers claimed the two officials were receiving threats. The Sixth Circuit U.S. Court of Appeals finally ordered the unsealing of the depositions four years after the plaintiffs requested the depositions be unsealed.

The lawsuit was previously settled in 2017 when the Justice Department awarded the plaintiffs over \$3.5 million for "attorneys' fees, costs and expenses". In settling the case, the Department of Justice admitted the IRS abused its power and the criteria it used to screen applications for 501(c) status were inappropriate. "The IRS' use of these criteria as a basis for heightened scrutiny was wrong and should never have occurred. It is improper for the IRS to single out groups for different treatment based on their names or ideological positions. Any entitlement to tax exemption should be based on the activities of the organization and whether they fulfill requirements of the law, not the policy positions adopted by members or the name chosen to reflect those views."

Despite these admissions of wrong doing, the Obama IRS scandal did not result in any criminal charges.

As part of the same class action, Judicial Watch uncovered troves of documents about the IRS scandal. Judicial Watch filed at least 9 Freedom of Information Act (FOIA) lawsuits about the scandal.

In September 2014, a FOIA lawsuit forced the release of documents detailing that the IRS sought, obtained, and maintained the names of donors to Tea Party and conservative groups as part of "a secret research project".

In April 2015, Judicial Watch released court ordered IRS documents that included an email from Lerner asking that a program be set up to "put together some training points to help them (IRS staffers) understand the potential pitfalls" of revealing too much information to Congress.

In July 2015, Judicial Watch revealed the IRS scandal also included the Justice Department and FBI. According to the documents, an October 2010 meeting between Lerner, Justice Department officials and the FBI planned for the possible criminal prosecution of targeted non-profit organizations for alleged illegal political activity. As part of that effort, the Obama IRS gave the FBI 21 computer disks, containing 1,250,000 pages of CONFIDENTIAL IRS RETURNS from 113,000 non-profit 501(c) (4) social welfare groups as part of its prosecution effort.

Also in July 2015, Judicial Watch released Obama IRS documents confirming the agency used donor lists of tax-exempt organizations to target those donors for AUDITS. The documents also show IRS officials specifically highlighted how the US Chamber of Commerce may come under "high scrutiny" from the IRS.

In July 2016, Judicial Watch, through a court order obtained FBI documents which contained detailed narratives of FBI agent investigations revealing that to IRS officials including Lois Lerner and her aide knew that the agency was specifically targeting “Tea Party” and other conservative organization two years before disclosing it to Congress and the public.

Judicial Watch also separately uncovered in its lawsuit that Lerner was under significant pressure from Democrats in Congress and the Obama Justice Department and FBI to PROSECUTE and JAIL the groups the IRS was already improperly targeting.

In response to Judicial Watch’s litigation, the IRS initially claimed that emails belonging to Lerner were supposedly missing. Ultimately, IRS officials conceded that the “missing emails” were on IRS backup systems

The President of Judicial Watch, Tom Fitton said “these depositions of Obama’s IRS officials will help Americans understand the continued clear and present danger from the IRS to our civil liberties”. *The Judicial Watch Verdict Vol 28 Issue 9 September 2022 p. 9.*

As always, if you have any questions about these or any other matters, do not hesitate to call us.