Trump’s labor department moves to designate gig economy workers as “independent contractors”

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The Trump administration is moving rapidly to back so-called Gig Economy companies, which deliberately misclassify their employees as “independent contractors” in order to circumvent minimum wage, overtime and other longstanding federal labor laws.

In an open opinion letter released Monday, the US Department of Labor (DOL) sided with an unnamed company, which connects consumers to house cleaners. The company asked the Labor Department’s Wage and Hour Division for clarification on whether it could designate its employees as independent contractors.

The letter, signed Keith E. Sonderling, the acting administrator for department’s Wage and Hour Division, provides a series of specious arguments to justify classifying the company’s workers as independent contractors. The letter claims the housekeeping workers essentially “work for themselves” and are not employees because there are no limitations or restrictions from the company on the hours they can work or to prevent them from working for competitors.

It also said the workers were not “permanent” because they were free to leave the company as they choose and free to use their own “facilities and equipment.” The letter also cited the “lack of integration” between the unnamed company in question and the workers who use the company to find work.

“This DOL opinion letter is a cynical interpretation of employment law,” said Rebecca Smith, a spokesperson for the National Employment Law Project, which has exposed wage theft and other abuses of contract and temporary workers. “Whatever gig company sought the opinion will likely use the letter as a free pass to argue that it acted in good faith in classifying its workers as contractors—even when its actions fail to satisfy the traditional legal test for determining employment status.”

Smith further stated, “The effort to secure a DOL opinion letter may be just one more piece of a coordinated industry campaign to strip gig workers of minimum wage and other employee protections.” The Labor Department, she said, relied on information solely from the company and ignored key facts in the case. The company that initiated the case “assigns workers to jobs, sets their pay, and disciplines them when they fail to meet the company’s rigorous performance standards. Under those facts, how can the workers be in business for themselves?”

The Labor Department letters provides a greenlight to for the greater exploitation of these already vulnerable workers, which in turn will be used to drive down wages and conditions of the whole working class. The Trump administration has stacked various regulatory agencies with former corporate executives and lobbyists while the right-wing majority of the Supreme Court has repeatedly made ruling that block workers access to class action lawsuits by tying them up in arbitration proceedings that inevitable favor corporations.

In a recent report NELP revealed how “intermediary software” companies like Uber and in particular Handy (a home services provider) work with right-wing corporate lobbyists to rewrite labor laws making it easier for them to mislabel workers as contractors. By falsely portraying themselves as merely “intermediaries” between consumer and worker these companies are free to pump out more surplus value from workers by paying them less than the already

abysmally low federal minimum wage.

While not legally binding, the opinion letter has far reaching consequences for the potentially millions of workers who currently work "Gig" jobs, driving for Uber or Lyft, and other such part-time jobs made possible through intermediary software apps. If a company can designate its employees as an independent contractor, they are not required to pay the federal minimum wage or overtime, and they are under no legal obligation to provide benefits or workers compensation to injured workers.

Although it is difficult to determine at any moment exactly how many gig workers there are, the best estimates on the matter put the number anywhere from one to five million.

Indeed, for most of these workers the job is not some part-time "gig" but a full-time job with many working for competing apps simultaneously. Nor is it true, as the Labor Department letter claims, that workers are "free to set their hours." Instead workers are often forced to compete against each other for the most profitable hours.

Minimum wage, overtime hours, workers compensation and other federal protections were signed into law with the passage of the Fair Labor Standards Act in 1938. The law was part of a series of reforms enacted by the Roosevelt administration in response to political radicalization of the working class and wave of militant strikes and plant occupations that sparked fears in the ruling class that America was heading towards a socialist revolution.

The decades-long decline of American capitalism and the transformation of the trade unions into the direct instruments of corporate management has resulted in a decay in the social position of the working class and the reemergence of the most brutal forms of exploitation.

This was accelerated after the 2008 global financial crash, which was used by capitalist governments everywhere, led by the United States, to further restructure class relations and overturn gains won by workers through generations of struggle. After bailing out Wall Street, the Obama administration restructured the auto industry, slashing wages in half for new hires and sharply increasing the number of part-time and temporary workers.

During Obama's two terms in office, 95 percent of all the new job growth were temporary, part-time positions, including work obtained through independent contracts and "gigs." Under the Democratic president and now Trump, these conditions are being transferred to the "real" economy.

Truck drivers are increasingly designated as independent contractors by their firms, freeing them from any obligation to pay minimum wages and shifting the costs of fuel, insurance, lease payments and maintenance costs onto drivers. In California in 2011, truck drivers filed over 800 wage theft claims against freight carriers charging that they had been robbed of millions of dollars in wages and overtime pay due to being misclassified as independent contractors.

In 2018 food delivery service app Grubhub was brought to trial in a wrongful termination lawsuit. The judge in that case ruled that Grubhub was merely a software platform for connecting drivers and dining establishments and therefore the drivers were not eligible for workplace protections or benefits.

One former Grubhub driver, Candice Roberts, commented at the time, "One of the biggest issues I had with attempting to work for these app-based delivery companies is car insurance! They simply deny any proper coverage for car insurance (some don't cover any at all!) if you're in an accident on the job and tell you to rely on your own car insurance." The cost of personal business insurance is often more than the company pays them, she said. "They are putting their drivers' lives at risk! They don't care about their drivers at all!"

In a perfunctory response to the opinion letter, an AFL-CIO spokesperson told the *Wall Street Journal*, "The labor movement embraces advances in technology. But we reject the use of 21st century breakthroughs as an excuse for 19th century labor practices."

In fact, the unions have been complicit in the decades-long war against the working class, which has made the very concept of "job security" inconceivable to whole generation of workers.