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While President Donald Trump has filed numerous lawsuits challenging the election results, Thomson Reuters has examined how a Joe Biden presidency could have a significant impact on employers. This is particularly true in the area of wage and hour, worker classification, and wage theft.

[[From the Thomson Reuters blog.](#)]

**Wage Theft.**

Biden noted on his official website as a campaign platform item that wage theft is a

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misclassification a substantive violation of law under all federal labor, employment and tax law. Additionally, he has indicated an intent to build on the Obama-administration efforts to drive an “aggressive, all-hands-on-deck” enforcement effort to reduce worker misclassification (see [Biden Campaign Website, Empower Workers](#)).

## **Gig workers.**

Biden's platform notes that employer misclassification of “gig economy” workers as independent contractors prevents them from receiving their legal benefits and protections. Biden supports the use of a strong three-prong “ABC test” to distinguish employees from independent contractors. The revamped ABC test would mean more workers will get the legal protections and benefits they rightfully should receive. Biden has indicated he will work with Congress to establish a federal standard modeled on the ABC test for all labor, employment, and tax laws.

*ABC Test.* Biden favors an ABC test very close to the newly adopted test in California (see [Payroll Guide ¶19,045](#)). The three prongs of the ABC test would be as follows:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business; and
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

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