

ACWI ADVANCE

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Labor Nominee Faces Headwinds

If and when the nomination of Acting Secretary of Labor Julie Su is confirmed by the Senate, will she remain an enthusiastic advocate of California's radical style of labor regulation, or moderate her views as she did at her contentious confirmation hearing on April 21?

In 2021, she was easily confirmed by the Senate to be deputy secretary of labor, the No. 2 position under the previous Secretary of Labor, Marty Walsh, the former Boston mayor and union chief who served in the administration from 2021 until he stepped down in March.



Things have not gone as easy for Su this time around and her new nomination has stirred doubts among even some Democrat Senators who appeared to be dubious about her mismanagement of billions of dollars in money meant to help citizens and her zealous enforcement the state's anti-independent contractor labor legislation.

A former civil rights attorney, she served in a number of state government labor positions until her controversial tenure as head of the California Labor and Workforce Development Agency during the COVID-19 pandemic.

In that post, among Su's responsibilities was the supervision of the state's Employment Development Department, which was charged with handing out \$170 billion in unemployment claims. \$20 million to \$36 billion of which later turned out to be fraudulent. A state audit blamed her mismanagement for these enormous losses.

In addition, under her executive leadership, the entire system had become such a mess that an estimated one million qualified applicants never received any of the money they were due under law, and another 350,000 were deprived of funds because debit cards handed out by her agency

lacked adequate security measures, a fact that quickly became evident to professional criminals.

The issue of her responsibility for this mess was raised repeatedly at her Senate confirmation hearing that was held on April 20, where she faced criticism for not addressing the fraud issue in

California sooner or more effectively than she did.

There already is precedent for Democrat senators voting to block a Biden Labor Department nominee. Last year, Sens. Kyrsten Sinema (I-AZ), Mark Kelly (D-AZ) and Joe Manchin (D-WVA) voted to block Biden's nomination of Dr. David Weil to be chief of DOL's Wage & Hour Division, a position he had served in during the Obama administration.

In a situation similar to Su's, He was rejected because of his similarly extreme position condemning the very idea that the independent contractor concept could in any way be legitimate.

When he served at DOL under Obama, Weill had gone so far as to publicly declare that there were no such things as independent contractors; they all were simply misclassified employees (a phrase that

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was later repeated by Hillary Clinton during her 2016 presidential run).

In the immediate aftermath of the April 20 hearing, Kelly, Sinema, Manchin and Sen. Jon Tester (D-MT) who earlier expressed doubts about her nomination had not yet said how they intend to vote on her nomination.

In her role as head of California's state employment agency, Su vigorously enforced an anti-contractor measure, she also raised the ire not just of employers, but also of the independent contractors and gig workers who were hurt by her enthusiastic embrace of AB 5, the state's law seeking to eliminate most forms of contractor status.

She went as far as to condemn the use of contractors for leading to what she tartly termed "the day laborization of our economy."

In a 2019 interview she explained, "we will be doing investigations and audits so that those who want to comply with the need to reclassify can do so and those who don't will understand that's not the kind of economy we want in California."

She began this process by adjudicating about 1,000 cases in the port trucking industry the she said resulted in finding millions of dollars owing to truck drivers who judged to be misclassified.

During her April 21 Senate hearing, Su noted that there is no new independent contractor rulemaking currently on DOL's agenda and declared that she had no intention of adding one absent a law from Congress directing her to do so.

What is on DOL's agenda is a rulemaking seeking to preempt the department's Trump era independent contractor rule and substitute it with one that is similar to the Obama era rule that it had replaced. DOL's official agenda says the new rule is scheduled to be issued this August.

Although members of the House of Representatives have no vote on Su's confirmation, House Speaker Kevin McCarthy (R-CA) and prominent House Republicans sent a letter to President Biden have expressing their unhappiness with her nomination.

"Because of her misguided record in California, we have major concerns about potential disastrous ramifications at the federal level if Ms. Su becomes Secretary," they declared.

Rail Problems Persist for Chem

Rail service problems continue to plague chemical shippers, according to a new survey conducted by the American Chemistry Council.

"There are signs that conditions have improved, but the transportation problems plaguing our members are far from resolved,"

said Emily Sanchez, the council's director of economics and data analysis. "Marine and truck transportation have improved while poor rail service continues to be a major concern."



Nearly all (93%) of the companies surveyed told ACC that supply chain and freight transportation disruptions are negatively impacting their chemicals manufacturing business.

Compared to conditions in the first half of 2022 (H1), 67% of companies reported supply chain and freight transportation disruptions were generally better in the second half of last year. Compared to conditions prior to the pandemic, however, 83% of companies say they are worse.

Among respondents, a majority (86%) reported they modified operations because of supply chain issues and/or transportation disruptions and delays in H2.

In both the first and second half of 2022, about 36% of companies experienced customers canceling orders because they were concerned their order would not arrive or would not arrive on time.

Supply chain issues and transportation disruptions continue to push up transportation costs. More than half (62%) of chemical manufacturers saw costs rise over H2 of 2022.

In order to address the ongoing rail service issues, ACC is calling on the Surface Transportation Board to increase competition in the rail industry through reciprocal switching and holding railroads accountable for service failures by establishing minimum service standards.

ATRI Suggests Camera Strategy

Although in-cab cameras are widely unpopular among truck drivers, strategies for increasing their acceptance are being offered by the American Transportation Research Institute.



Driver approval of driver-facing cameras tends to be low – just 2.24 on a 0-to-10 scale among the 650 truck drivers who are current users that were surveyed, by ATRI.

The institute says that low scores are created in part by limited driver experience, confusion over the variety of camera systems, unclear carrier policies, and strong concerns about privacy.

However, women rated the protection of their privacy with driver-facing cameras onboard 34% lower than did men, according to ATRI.

“Driver-facing cameras are an important safety tool for carriers, but they must be managed carefully in order to leverage benefits with drivers, insurers and attorneys,” said Jerry Sigmon Jr., chief operating officer for Cargo Transporters Inc.

“ATRI’s research on in-cab cameras provides an important blueprint for both carriers using these technologies as well as carriers still contemplating the investment.”

The organization’s research report (which is available [here](#)) identifies specific carrier policies and driver management approaches it says lead to higher driver ratings. Overall driver approval of driver-facing cameras increased by 87% when carriers used video footage for specific proactive safety measures, ATRI reported.

Additional analyses focus on insurance and litigation considerations for in-cab cameras. Experts in both fields expressed preference for event-based driver-facing cameras over continuously recording cameras, and they concurred with drivers that primary video footage access should be limited to safety managers as much as possible.

Retail Theft Is Growing Issue

The National Retail Federation reports that organized retail crime (ORC) is growing nationwide in both scope and complexity.

“Organized retail crime has been a major concern for the retail industry for decades, endangering store employees and customers, disrupting store operations and inflicting billions in financial loss for retailers and the communities they serve,” said NRF President Matthew Shay.

“These concerns have grown in recent years, as criminal groups have become more brazen and violent in their tactics and are using new channels to resell stolen goods,” he added.

NRF has issued a report, **Organized Retail Crime: An Assessment of a Persistent and Growing Threat**, which was prepared in partnership with K2 Integrity, a global risk advisory firm.

“The ORC industry will grow more dangerous, complex and profitable, and its illicit proceeds will fuel more organized criminal networks and operations in the U.S., globally and virtually, if more concerted action is not taken to disrupt these trends,” said Juan Zarate, global co-managing partner and chief strategy officer at K2 Integrity.

The report finds that ORC groups largely target everyday consumer goods — which offer a favorable balance between ease of theft, monetary value and ease of resale. Only 11% of ORC groups targeted luxury goods.

The median ORC fencing operation handled about \$250,000 in stolen merchandise. ORC fencing operations rely on online marketplaces as one resale channel, with about 45% of them using online marketplaces for their resale operations.

ORC fences that conduct online resale operations appear to be shifting away from third-party online sellers and toward peer-to-peer websites that offer direct engagement among buyers and sellers.

NRF also found ORC groups rely on advance planning to ensure success of their theft operations.

Reform Sought In Migrant Law

Employers believe our immigration system needs modernizing to spur economic growth and keep the United States in the international trade game, finds the Society of Human Resource Management.

"As the economy emerges from the pandemic, employers see workplace immigration as a solution to workforce challenges, a driver of economic growth and key to keeping the U.S. globally competitive," says Emily Dickens, SHRM's chief of staff and head of public affairs.

"Congress has an opportunity to modernize the system and contribute to the long-term success of our economy and our entire workforce."

SHRM admitted that the release of this research is intended to support encouraging Congress and the Biden Administration to take actions that will modernize the Immigration and Naturalization Act.

Key findings of the survey were that nearly three in four (73%) of responding employers agreed that increased immigration encourages economic growth and makes America more globally competitive.

A majority (54%) agreed the U.S. is losing out on top talent because of its immigration system. This is coupled with more than 78% of employers who disagreed that increased immigration would make it harder for Americans to find jobs.

While employers had overall positive experiences with their foreign-born workers, that was in contrast to the low levels of positive experience with the system as a whole, SHRM says.

Top improvements suggested by the employers include enabling electronic filing throughout the system, introducing automatic renewals on a continuous basis, and providing more guidance from applicable government agencies.

They also would like to see created a "Known Employer" program that streamlines the process for employers that submit multiple applications, as well as increase the number of immigrant and non-immigrant visas available

Safety Rating Change Mulled

Depending on which federal official is speaking, the Federal Motor Carrier Safety Administration is taking a serious look at possibly changing current fleet safety rating system – or it is not doing so.

Truckers have long expressed their unhappiness with the current Satisfactory, Conditional and Unsatisfactory ratings they can be assigned by FMCSA following safety inspections and examination of their operational practices.



A big complaint arises from the Conditional rating, which can be corrected by a follow-up inspection conducted by FMCSA after the trucker has made the required improvements. The problem is that the agency either fails to follow up or takes seemingly forever to do so, according to truckers.

Another problem is that insurance companies actively discourage shippers from using truckers with Conditional ratings, which ends up putting those carriers out of business until they can qualify for Satisfactory ratings.

Speaking at industry meetings earlier this year, two different FMCSA officials seemingly contradicted each other. One said that a possible revamping of the system will soon be under review, while another pronounced that the topic is not even on the agency's agenda for consideration.

In another development, FMCSA said it plans to drop a complicated method for assessing an individual carrier's safety that had been developed for it by the National Academy of Sciences.

The new standard is intended to create a safety focus on violations severe enough to result in an out-of-service order for a truck. FMCSA also says it will focus more on recent violations when choosing carriers to be subject to roadside inspections.

China's Logink Poses Dangers

By Rep. Michelle Steel (R-CA)
& Sen. Tom Cotton (R-AR)

For more than 15 years, the Chinese Communist Party (CCP) has developed an elaborate espionage campaign to gather insight on American businesses, strategic assets, and supply-chain weak links. The goal: to gain a competitive foothold it can leverage against the United States and our allies.

As part of that campaign, China's Ministry of Transportation funds and controls Logink, a free shipping and logistics platform that collects real-time data from users at ports around the world.

Starting as a regional program in China in 2007, Logink has exploded in popularity in recent years. The platform is now in use at more than 20 ports worldwide. The technology allows Beijing to track the cargo manifests and transit routes not only of U.S. commercial vessels, but also of our military's logistics. This is a recipe for disaster.

In the commercial space, Logink could provide Chinese companies unprecedented insight into their competitors' business, allowing China to undercut competition and strengthen its position in the global marketplace.

And while unfair business practices are concerning enough, Logink's threat to U.S. national security is even greater.

Imagine if the Chinese government knew where the U.S. shipped new weapons systems, or if the PLA Navy knew exactly when U.S. military logistics vessels shipped out and returned home. To avoid increased surveillance, U.S. ships might have to keep away from certain ports entirely.

In November, we wrote to President Biden asking him to clarify his plans to counter the use of Logink. He never responded. The last National Defense Authorization Act included language requiring the administration to report to Congress

on the scope of Logink's use by the military, and the administration's plans to guard against this threat.

By law, the administration has until June to issue that report, but Congress shouldn't wait that long. We're introducing the Securing Maritime Data from Communist China Act to protect the U.S. now.



Our bill will prevent the Department of Defense from entering contracts with any entity that uses Logink. This will take effect after two years, giving the administration sufficient time to

negotiate with allies, and giving the military time to develop alternative practices and protocols.

It also requires the president to ensure any major international agreement, such as the Indo-Pacific Economic Framework (IPEF), will stop the platform's proliferation through U.S. industries, as well as those of our partners.

While the U.S. has taken some good first steps to counter the CCP's data-collection campaign in recent years, we have a lot of work to do. In 2019, the government took action to ban CCP-backed telecom company Huawei from distributing products in the U.S. Just this month, the Pentagon learned of Chinese-made cranes operating in ports nationwide that report shipping data to the CCP.

In addition, Congress also is considering legislation to implement a full statutory ban on the TikTok social media app, whose powerful tracking algorithms and connection to the CCP make it a grave threat to American security and privacy. It is well known that TikTok not only gathers users' personal information, but also gives the CCP access to users' files, text messages, biometric data, and even their keystrokes.

We must stop the CCP's onslaught on our personal privacy and national security. Ending Logink's proliferation is the next step to ending China's espionage campaign.