

I am a University of Colorado Law School Professor of labor/employment law, economic/statistical analysis, and litigation. From 2019-25, I was Director of the CDLE Division of Labor Standards and Statistics (DLSS), the state agency for labor economics and labor rights enforcement, rulemaking, and policy. This written testimony (on my own behalf, not for any other person or entity) details facts and history that I believe show [SB26-091](#), “**Exclusion of Newspaper Deliverers as Employees,**” is bad policy and a troubling precedent for how to conduct litigation, legislation, and appropriation.

(1) **SB91 is an unprecedented carve-out of specific jobs from almost all labor rights.** Some jobs have *partial* exemptions or variances, like overtime in agriculture. But the SB91 text shows this is the first (and only) carve-out of a specific job from the entire “employee” definition in several laws. And many other labor laws apply the Wage Act’s definitions, so SB91 **excludes workers from a wide range of protections:** the bans on wage theft and illegal deductions; paid sick and family/medical leave; union efforts and other concerted action; CDLE complaint filing; and protection against retaliation.

(2) **SB91 interferes with pending litigation, which also makes it premature,** regardless of whether it’s good or bad to exclude these workers from the rights of “employees.” DLSS has issued Citations to the Denver Post for misclassifying its deliverers as “independent contractors,” not “employees.” The Post filed a still-pending appeal, and that’s the right way to resolve that legal dispute — not changing the law to preempt the ongoing legal process. That also makes SB91 badly premature: if the Post wins its appeal, then this bill will have been a waste of effort.

□ Together, points (1)-(2) show how **passing SB91 would be an unwelcome invitation,** to any powerful enough employer, to ask the legislature to exempt their workers from whatever rights the employer wishes not to provide.

(3) **SB91 confusingly replaces uniform law with job-specific standards.** The “who’s an employee versus a contractor” analysis is fact-intensive, so it’s all the more important that we’ve had this clarity: all jobs apply the same law. Whenever you analyze a new job, you look at the same factors that have applied to other jobs: how much control the employer has; how much the worker uses specialized skills; etc. That’s why DLSS could produce clear [guidance on worker classification](#) for employers and employees; it didn’t need to explain different kinds of analysis for different jobs. It’s just confusingly bad law to require a different analysis for one specific job — and for whatever job the next industry lobbies to exclude.

(4) **SB91 is bad policy.** Some deliverers — in news, and elsewhere — work independently enough to be “contractors,” but the [first Citation](#) to the Post shows how *these* deliverers worked as “employees” entitled to the wages they were owed:

Denver Post has ... a number of subcontractors ... hire ... carrier[s] to deliver ... to the subscriber addresses provided by the Denver Post. Denver Post disclaims entirely any power to direct, control, or supervise [carriers] ... The evidence overwhelmingly indicates otherwise.... Denver Post could (and did) direct, control, and supervise.... For example, ... [requiring] “insert[ing] into newspapers, prior to delivery, all preprinted advertising, supplements, inserts or other materials supplied by [the Post]....” [It] also determine[s] where [carriers] performed their work ... [with] a specific location — a distribution center ... owned or leased by Denver Post.... [C]arriers are prohibited ... from contacting subscribers.... If they wanted to leave a tip ... , they sent it to Denver Post. But more relevantly to supervision — if they had a complaint or a request, they communicated that directly to Denver Post ... to a call center that DP Media Network manages ... [o]n the “Contact Us” webpage (emphasis added) [of] Denver Post....

This is all consistent with the apparent reason for this business arrangement. Denver Post ... wants to deliver the correct publications in good condition to those subscribers as efficiently as possible.... [T]o do so effectively, Denver Post has retained a great deal of control An entity can choose to retain significant control over workers in the performance of their work for its benefit -- but doing so generally makes that entity an employer of those workers.

(5) **SB91 dangerously ignores the fiscal process.** As former DLSS Director, I was unsurprised to see a fiscal note, because SB91 requires of DLSS: (a) additional rulemaking to change the “employee” definition (in a rule set DLSS does *not* reopen regularly, contrary to a mistaken suggestion I heard); (b) changes to DLSS’s detailed published [guidance on worker classification](#), and (c) likely reopening or revising still-pending proceedings about delivery drivers. Yet despite [two](#) different [versions](#) of the SB91 fiscal note declaring an identical \$40,000 cost, the Senate appropriated *no* funds. For DLSS to do this work unfunded, it’d need to divert enough staff time that it’d be able to do at least a dozen *fewer wage theft investigations*. So this bill’s unfunded mandate will worsen Colorado’s wage theft investigation and enforcement.

Ignoring the fiscal note would be troublingly impactful well beyond just DLSS. My seven sessions as Director saw typical agency/legislature fiscal note disagreements — but not a \$0 appropriation after repeated fiscal notes declared a need for funds. **Agencies will oppose more legislation if they can’t trust fiscal notes not to be ignored** after initial hearings.