

United States Senate

WASHINGTON, DC 20510

June 22, 2026

The Honorable Keith Sonderling
Acting Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC, 20210

Re: Proposed Rule on Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, RIN 1235-AA48

Dear Acting Secretary Sonderling,

The Department of Labor (“DOL”) has proposed an ill-advised rule that would leave workers more vulnerable to labor violations and stolen wages. DOL’s proposal on Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act, RIN 1235-AA48 (“Proposed Rule”) would water down DOL enforcement investigations, making it easier for employers to shirk responsibility for wage theft, child labor violations, and worker protections. Amidst spiking gas prices, rising medical bills, and higher grocery costs, DOL is weakening compliance and accountability, meaning workers will face greater risk of being deprived of what they are owed, and small businesses will be left with the short end of the stick while larger companies are let off the hook.¹

Joint employer status is built on a simple premise: if a company wants to act as an employer, then it must assume responsibility for worker protections as required under law. When drafting the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Congress intentionally used an expansive definition of employer, meaning to employ or “to suffer or permit” to work.² Congress set a broad definition of “employer” to capture the vast and complex types of employment structures that exist, including instances where a worker may be employed by two entities. Unfortunately, DOL’s proposed rule fails to adhere to congressional intent and instead invents an overly strict interpretation of joint employer status that diminishes DOL’s ability to hold large actors accountable.

¹ American Automobile Association, *Fuel Prices*, AAA Gas Prices (Accessed May 26, 2026), <https://gasprices.aaa.com/>; Gretchen Morgenson, *Hospital costs are rising far faster than inflation and drowning Americans in debt*, NBC News (Apr. 2, 2026), <https://www.nbcnews.com/investigations/hospital-costs-are-rising-far-faster-inflation-drowning-americans-debt-rcna262473>; Joe Murphy & Jiachuan Wu, *Graphic: How grocery prices have changed since Trump took office*, NBC News (accessed May 26, 2026), <https://www.nbcnews.com/data-graphics/grocery-price-tracker-inflation-trends-eggs-bread-trump-administration-rcna257424>.

² *Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship: Hearing Before the H. Comm. on Education and the Workforce*, 115th Cong. (July 12, 2017) (Testimony of Catherine K. Ruckelshaus, National Employment Law Project), https://edworkforce.house.gov/uploadedfiles/ruckelshaus_-_testimony.pdf.

Creating a robust joint employer rule would prevent a race to the bottom, protect small businesses from sole liability, and increase compliance with federal statutes as Congress intended.³ However, the new proposed rule falls flat. The proposed rule’s four-factor test of vertical joint employment inappropriately limits select employment factors instead of taking an expansive view that accounts for the totality of circumstances that could affect joint employment status. Likewise, the factors DOL selected to determine horizontal joint employment relationships fail to capture the full expanse of relationships between employers and may deter investigations into larger companies that oversee intricate networks of subsidiaries and locations.

Contrary to DOL’s purported motivations for the proposed rule, it would harm small business owners and franchisees, leaving them solely liable even when a larger employer exerts — or retains the right to exert — significant influence over their operation, such as dictating employee behavior, expectations, functions, and price of goods.⁴ Indeed, many franchisors and large employers are already significantly involved in the affairs of small businesses, setting mandatory hours of operation, supplier restrictions, and even how employees greet customers.⁵ An April 2026 study found that franchisor control over franchisees has only increased over a 15-year period; indeed, these small businesses have lost autonomy on “pricing, product offerings, territory, governance, information, and financial obligations — while franchisor control has increased.”⁶

This proposed rule may provide a permission slip to many franchisors and large employers to wash their hands of responsibility for legal compliance, thus empowering corporate headquarters to exert *more* control over small businesses, knowing they can do so without being classified as an employer. The demands and requirements of larger employers — and the lack of agency by small businesses to set standards — may have been the very impetus that pushed smaller entities into violations.⁷ Likewise, the large employer’s inattention may have allowed violations to fester unaddressed, yet only the small business would be on the hook. Less shared responsibility means less compliance support and resources for small businesses. Such abdication is especially concerning as this business model has significantly higher rates of labor law violations and is associated with lower-wage workplaces due to vertical restraints imposed on small businesses.⁸ Rather than providing “clarity” to small businesses, the proposed rule leaves them in the dust.

³ *Id.*

⁴ Andrew Elmore, *The Future of Fast Food Governance*, University of Pennsylvania Law Review Online, Vol. 165, 2017 (January 22, 2017), <https://ssrn.com/abstract=2903691>; Brian Callachi, *Big fast-food squeezes workers and franchisees alike*, Capitol Weekly (Mar. 28, 2025), <https://capitolweekly.net/big-fast-food-squeezes-workers-and-franchisees-alike/>.

⁵ Brian Callachi, *What Do Franchisees Do? Vertical Restraints as Workplace Fissuring and Labor Discipline Devices*, The Law and Political Economy (LPE) Project (Nov. 18, 2021), <https://lpeproject.org/blog/what-do-franchisees-do-vertical-restraints-as-workplace-fissuring-and-labor-discipline-devices/>.

⁶ Ulrich Atz et al., *The Balance of Power in Franchising*, The IZA@LISER Network (April 20, 2026), <https://ssrn.com/abstract=6613218>.

⁷ *Id.*

⁸ MinWoong Ji & David Weil, *The Impact of Franchising on Labor Standards Compliance*, ILR Review, Vol. 68(5), 977-1006 (May 14, 2015), <https://doi.org/10.1177/0019793915586384>; Brian Callachi et al., *Vertical Restraints and Labor Markets in Franchised Industries*, Research in Labor Economics, in: Big Data Applications in Labor Economics, Part B, Vol. 52, 255-301, Emerald Group Publishing Limited (2024), https://marshallsteinbaum.org/wp-content/uploads/2025/02/Vertical_Restraints_Labor_Markets_RLE_2025.pdf.

Concerningly, these changes are happening at a time of diminished enforcement capacity at DOL's Wage and Hour Division (WHD) and soaring labor rights violations.⁹ Since Fiscal Year 2024, the number of staff at WHD has declined, with 179 fewer positions, the lowest in decades.¹⁰ Though labor violations have only increased, this Administration has collapsed wage and hour enforcement penalties by 83% and cut enforcement cases by 97%.¹¹ This failure of enforcement persists while employers steal an estimated \$15 billion in wages from workers every year through minimum wage violations alone.¹² Across the country, employers steal more than \$4 billion in eligible overtime violations through mislabeling of job titles and other tactics.¹³ Whether intentional or not, employers can often violate FMLA through tactics ranging from denial of leave to retaliation and wrongful termination.¹⁴ Without a robust WHD and strong enforcement standards such as a strong joint employer rule, many of these violations go unanswered, leaving workers with stolen wages and less recourse.

Above all, we fear the workers most vulnerable to wage theft and labor law violations are the ones who will be most negatively impacted by this proposed rule. Janitorial staff, agricultural laborers, construction workers, and nurses are some of the professions that have been increasingly outsourced to a convoluted system of contractors, subcontractors, temporary staffing agencies, and other entities in what amounts to a "fissured workplace" where lines of employer blur and workers are left in progressively more precarious positions.¹⁵ For many workers, one stolen paycheck or other labor law violation can determine their ability to afford rent, groceries, or childcare.

We urge DOL to withdraw this proposed rule and ensure that anyone who acts as an employer is held accountable under federal law to protect America's workers and small businesses.

Sincerely,

⁹ Press Release, Economic Policy Institute, With child labor violations on the rise, new report shows that child labor laws are under attack in states across the country (Mar. 14, 2023), <https://www.epi.org/press/with-child-labor-violations-on-the-rise-new-report-shows-that-child-labor-laws-are-under-attack-in-states-across-the-country/>; UNICEF USA, *The Global Child Labor Crisis*, UNICEF USA (accessed May 26, 2026), <https://www.unicefusa.org/stories/global-child-labor-crisis>.

¹⁰ U.S. Office of Personnel Management, *Workforce Size & Composition*, Data.OPM.gov (accessed May 26, 2026), <https://data.opm.gov/explore-data/analytics/workforce-size-and-composition>; Siobhan Standaert, *Worker Protections in Freefall: The Collapse of Federal Labor Enforcement under the Second Trump Administration*, Good Jobs First (Dec. 2025), <https://goodjobsfirst.org/wp-content/uploads/2025/12/Worker-Protections-in-Freefall-The-Collapse-of-Federal-Labor-Enforcement-under-the-Second-Trump-Administration.pdf>; Jakes Barnes et al., *To Help U.S. Workers, We Need Labor Standards Enforcement, Not Mass Deportations*, The Workplace Justice Lab at Northwestern University and Rutgers University (May 2025), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/WJL_immigration_databrief_May2025.pdf.

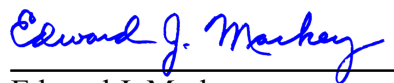
¹¹ Siobhan Standaert, *Worker Protections in Freefall: The Collapse of Federal Labor Enforcement under the Second Trump Administration*, Good Jobs First (Dec. 2025), <https://goodjobsfirst.org/wp-content/uploads/2025/12/Worker-Protections-in-Freefall-The-Collapse-of-Federal-Labor-Enforcement-under-the-Second-Trump-Administration.pdf>.

¹² National Employment Law Project, *Workers Lose Billions in Unpaid Wages Every Year*, NELP (July 2023), <https://www.nelp.org/app/uploads/2023/07/Workers-Lose-Billions-Unpaid-Wages-Every-Year.pdf>.

¹³ Laura Cohen et al., *Too Many Managers: The Strategic Use of Titles to Avoid Overtime Payments*, National Bureau of Economic Research (May 2025), <https://www.nber.org/papers/w30826>.

¹⁴ Simon Moshkovich, *What Happens if an Employer Violates FMLA?*, Mercer Legal Group (Nov. 4, 2025), <https://lawmercer.com/what-happens-if-an-employer-violates-fmla/>.

¹⁵ David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (2017).



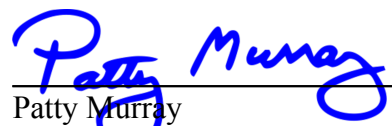
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