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Daniel Navarrete, Director
Division of Regulations, Legislation, and
Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, D.C. 20210

Comments on RIN 1235-AA46: Employee or Independent Contractor Status under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

Dear Director Navarrete:

The Center on Education & Labor at New America and New America Chicago write to oppose the proposed rule regarding the standard for determining who is an employee and who is an independent contractor under the Fair Labor Standards Act (“FLSA”), the Family and Medical Leave Act (“FMLA”) and the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”), RIN 1235-AA46; Fed. Reg. Vol. 91, No. 39 (Feb. 27, 2026) (“NPRM”).

The proposed rule, as written, would narrow the definition of “employ” beyond what Congress intended in all three statutes. FLSA, FMLA, and MSPA define “employ” as “to suffer or permit to work.” DOL’s attempt to narrow the definition of “employ” under these statutes will erode worker protections by allowing employers to misclassify employees as contractors and evade minimum employment standards. While we share the goal of clear, consistent standards, as proposed, these changes would undermine the foundation of middle-class jobs that President Trump has pledged to defend.

Worker misclassification is widespread, but it doesn't affect everyone equally. Due to systemic labor market inequalities and occupational segregation, the burden falls disproportionately on women, people of color, and immigrants as they are more heavily concentrated in fields where misclassification is most prevalent, like home health aids, janitors, house cleaners, construction workers, and nail technicians. The suggested changes could further expand these inequities, eroding the long-term protections afforded to employees under the existing laws. We urge the Department to withdraw this proposed rule.

The Center on Education & Labor explores the changing relationship between education, social mobility, and economic security—with the goal of promoting shared prosperity and middle-class renewal. Our work spans the education-to-career continuum, with special initiatives focused on supporting young adults, strengthening community colleges, expanding access to apprenticeships, navigating the future of work, and advocating for policies that improve the quality of jobs. We work directly with communities to identify barriers to economic mobility and to develop policies and practical solutions that reflect their needs and aspirations.

New America Chicago is a nonpartisan policy innovation lab and local hub of New America. Based at The Chicago Community Trust, we tackle challenges facing Illinois communities and partner with New America’s DC teams to shape federal and regional policy recommendations grounded in lived experience. We connect people in underinvested communities, across racial and political divides, directly to policymakers and those in power. We convene community leaders, thought leaders, policymakers, and other stakeholders committed to finding practical solutions to local challenges related to work, income, and inequity. We have an established body of work focused on contingent workers and how policy can help meet their needs.

We share a growing concern about the precarity of work: wages (especially for low- and middle-income workers have been suppressed,¹ enforcement of labor law has weakened due to systemic underfunding of necessary agencies like the NLRB,² and, yes, worker misclassification. Gig workers are at the intersection of these dangers.

Corporations misclassify employees as independent contractors across the country, shifting the risks and costs of the business onto workers, while channeling wealth to investors and business executives. This unfair practice depresses wages, deteriorates working conditions, and shirks responsibility for worker well-being while maintaining control over the types of things that true contract workers have a say in, like where, how, and for how much money workers perform their jobs. The result is that conditions “detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,” 29 U.S.C. § 202(a) that Congress passed FLSA to address abound.

Independent contractor misclassification is rampant in poorly-paid, labor-intensive, and high-risk industries like home health care, janitorial, trucking, delivery, construction, hospitality, and, of

¹ An Economic Policy Institute analysis of wage stagnation demonstrates unequal growth. Lawrence Mishel, Elise Gould, and Josh Bivens, *Wage Stagnation in Nine Charts*, ECON POL’Y INST (Jan 6, 2015) <https://www.epi.org/publication/charting-wage-stagnation/>

² Reporting from The Guardian shows NLRB underfunding has led to over a third of NLRB staff being cut since 2014 (and 50% since 2002) despite an increase in the number of union elections. Steven Greenhouse, *US labor leaders say underfunding at federal agency has ‘reached crisis stage,’* GRDN (Aug 17, 2022) https://www.theguardian.com/us-news/2022/aug/17/us-labor-agency-union-activity?link_id=7&can_id=7f8dc5647b05e8c908960e833bcbea2e&source=email-transit-workers-iatse-rock-fest-union-petitions-spike-more&email_referer=email_1635217&email_subject=starbucks-workers-organize-iatse-in-rangeley-union-petitions-spike-more

course, in app-dispatched jobs.³ The workers most targeted by misclassification are Black, immigrant, and other workers of color.

Because of misclassification, these workers scrape by on earnings that lag behind similarly situated workers classified as employees.⁴ Some of these so-called independent contractors do not even earn the federal minimum wage,⁵ let alone a wage that supports their family. Misclassification limits access to employee-only benefits like health insurance, workers' compensation, and access to leave, exacerbating racialized income and wealth inequities. Without these benefits, workers do not have the basic protections from misfortune and illness, our entire system of labor policy was designed to establish in perpetuity. Furthermore, most of our social safety net programs are organized around employees and the ability to demonstrate work and income. This can become cumbersome without a W-2 to aggregate hours, earnings, taxes paid, etc.

While narrowing factors and making them more consistent across multiple areas of the law is useful for clarifying the application of the law, the existing recommendations would only serve to roll back essential protections for a large number of low-wage and moderate-income workers. Elevating two factors above other equally important factors, as proposed, fails to account for the economic realities of many working relationships and will artificially narrow who is a covered employee under these three statutes, with a higher negative impact on workers of color. The proposed rule will enable employer misclassification schemes, evasion of their obligations under FLSA, FMLA, and MSPA, and degradation of job quality across the country. We urge the Department to rescind the proposed rule, return to the 2024 regulation, and hold corporations accountable for misclassification with appropriate enforcement mechanisms.

Sincerely,

Center on Education & Labor at New America
New America Chicago

³ An Economic Policy Institute analysis of 11 commonly misclassified jobs estimates that workers classified as independent contractors in these jobs lose out on thousands of dollars per year in income and job benefits relative to their employee counterparts. John Schmitt, Heidi Shierholz, Margaret Poydock & Samantha Sanders, *The Economic Costs of Worker Misclassification*, ECON. POL'Y INST (Jan. 25, 2023), <https://www.epi.org/publication/cost-of-misclassification/>.

⁴ Ibid.

⁵ A national study of digital labor platform workers (classified as independent contractors) found that 1 in 7 earned less than the federal hourly minimum wage, and 30 percent of digital platform workers received a Supplemental Nutrition Assistance Program benefit, compared to 15 percent of employees in comparable service-sector jobs. Ben Zipperer, Celine McNicholas, Margaret Poydock, Daniel Schneider & Kristen Harknett, *National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay*, ECON. POL'Y INST. (Jun. 2022), <https://www.epi.org/publication/gig-worker-survey/>.