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SUBMITTED VIA REGULATIONS.GOV

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, DC 20210

Re: Comment Opposing 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 Mr. Navarrete:

The undersigned 29 organizations submit this comment in opposition to the Department of Labor's (DOL) proposed rulemaking (Proposed Rule) on the joint employment standard under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which was published in the Federal Register on April 23, 2026. The Proposed Rule improperly narrows the standard for determining joint employment, undermining the broad coverage Congress intended under the FLSA, FMLA, and MSPA. Further, the Proposed Rule contravenes the statutory definition of "employ" under the FLSA and Supreme Court precedent, and suffers from the same substantive defects as DOL's 2020 Final Rule (2020 Final Rule), which was largely invalidated by a federal district court in *New York v. Scalia*, 490 F. Supp. 3d 748 (S.D.N.Y. 2020). Narrowing the joint employment standard at a moment when workplace fissuring is increasingly common will severely limit workers' access to vital statutory rights, including minimum wage, overtime pay, job-protected leave, and access to breaks and private space for pumping breast milk.[1] Although the Proposed Rule will harm a broad spectrum of workers, it will have a disproportionate impact on the most vulnerable women workers, who tend to predominate in low-paying jobs that are endemic to the fissured workplace. Accordingly, the undersigned organizations urge DOL to withdraw the Proposed Rule.

I. In the fissured economy, narrowing the joint employer doctrine harms workers, especially women.

Today's workforce is typified by a growing number of heavily fissured industries, including retail, hotels, fast food, janitorial, construction, agriculture, and app-based platforms. In this model, companies outsource traditional "in-house" services like recruitment, training, and day-to-day management to subcontractors and staffing firms. Franchise agreements are premised

[1] The FLSA encompasses both the Equal Pay Act (EPA), 29 U.S.C. § 206(d); 29 U.S.C. §§ 203(d)-(e), (g), and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act, 29 U.S.C. § 218d, meaning that workers will face new barriers in accessing their rights to be free from pay discrimination and to access workplace lactation accommodations, and in obtaining relief for violations of those rights.

on a similar structure, by which a lead company sells its brand to third parties; those entities operate with nominal independence while adhering to rigid brand standards. Workers in these industries disproportionately face wage theft, poor working conditions, and other violations of their statutory rights, yet they also struggle to obtain relief from such mistreatment. Under these structures, the companies profiting the most from workers' labor, and holding the most power to control their working conditions, disclaim liability because the workers are not on their payroll.[2]

The number of low-wage workers in contingent work arrangements is enormous and growing.[3] The Economic Policy Institute, in an analysis derived from U.S. Census Bureau and Bureau of Labor Statistics data, estimates that in 2025, conservatively, there were 15.14 million employees working in "fissured establishments"—working either for temporary help agencies, contract firms, or franchises.[4] Such estimates likely do not capture the full extent of the contingent workforce, due to factors such as workers' errors in self-reporting—because, for instance, they are not even aware that they are working for a subcontractor, franchisee, or other third party intermediary—and limitations on the types of workers and work arrangements included in available surveys.

The fissured workplace has a significant gender component: among the low-wage jobs that are commonly outsourced are those disproportionately performed by women, particularly Black and brown women—in fields such as health care, domestic work, janitorial, clerical, and hospitality.[5] To name just one illustrative industry, close to half of branded hotels—including big names like Marriott and Hilton—rely on subcontractors and other third parties to manage functions like housekeeping, foodservice, and laundry.[6]

The harms to workers posed by fissured work are well-documented.[7] Fissured jobs contribute to growing earnings inequality by paying less or offering few to no benefits or

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[2] *See*, *e.g.*, Catherine Ruckelshaus, et al., *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, National Employment Law Project (May 7, 2014), https://www.nelp.org/app/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards-Outsourced-Work-Report.pdf.

[3] *See*, *e.g.*, David Weil, *How to Make Employment Fair in an Age of Contracting and Temp Work*, Harvard Business Review (Mar. 24, 2017), https://hbr.org/2017/03/making-employment-a-fair-deal-in-the-age-of-contracting-subcontracting-and-temp-work (low-wage workers comprise "an estimated 29 million people in just 10 industries, according to the U.S. Department of Labor's Office of the Chief Economist").

[4] Economic Policy Institute, Comment Letter on 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 (June 22, 2026), https://www.epi.org/322868/pre/65dfbe5401314e32f132caa0ba2d4ad8f86d59f6f4abda5075809d11d8acf541/.

[5] *See*, *e.g.*, Nicholas Carteron, *Women are the Real Victims of Outsourcing*, Medium (Jan. 24, 2021), https://ncarteron.medium.com/women-are-the-real-victims-of-outsourcing-3726dd906157. Women also disproportionately are represented among the ranks of temporary workers in the business and professional service sectors. *See*, *e.g.*, National Women's Law Center, *#JobsReport: Gains for Women Are Too Often Temporary – Literally.* (Nov. 4, 2016), https://nwlc.org/jobsreport-disparities-remain-and-gains-for-women-too-often-temporary-literally/.

[6] Noelle Mateer, "Nearly half of branded hotels are managed by third parties: report," *Hotel Dive* (Dec. 6, 2024), https://www.hoteldive.com/news/branded-hotels-third-party-management-report/734830/.

[7] *See*, *e.g.*, David Weil, *Understanding the Present and Future of Work in the Fissured Workplace Context*, RSF: The Russell Sage Foundation Journal of the Social Sciences, Vol. 5, Issue 5, 147-165 (Dec. 2019); Annette

opportunities for training and advancement. Fissured employers may also be more likely to classify or misclassify the workers they hire and supervise as independent contractors, which costs these workers their entitlement to statutory civil rights protections and makes them ineligible for safety net benefits like workers compensation and unemployment insurance.[8] Indeed, when it comes to labor and employment law compliance of all kinds, third party intermediaries operate at slim profit margins and cut corners, thereby degrading working conditions.[9] Contingent workers often receive insufficient safety training, making them more vulnerable both to injury and retaliation for reporting injuries than workers in traditional employment relationships.[10] Wage theft is especially prevalent in industries with heavy reliance on subcontracting, temporary work, and other forms of alternative work arrangements.[11]

Recent heightened immigration enforcement has made contingent workers even more susceptible to abuse, enabling employers to violate labor laws while degrading standards for all workers, regardless of immigration status.[12] Research confirms that Immigration and Customs Enforcement has a record of conducting high-profile workplace raids either during or on the heels of a DOL or other agency investigation, or court action.[13]

The joint employment doctrine ensures that workers' rights can be meaningfully enforced even when more than one entity performs the functions of an employer. Under the doctrine, when companies outsource their workforce without ceding the ability to exert control over the work, they remain jointly accountable under labor and employment laws. When employers are subject to such joint responsibility, they are invested in ensuring that such statutes are followed, and consequently, in providing better oversight of working conditions and employment practices. And when the companies with day-to-day contact with workers violate their statutory rights, the joint employment doctrine allows employees to hold accountable the entities that are truly calling the shots.

The protections of FLSA (including the EPA and PUMP for Nursing Mothers Act), the FMLA, and MSPA are too vital, to too many, to depend on an unduly narrow construction of "employ" that ignores the realities of the modern workplace.

Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities,* Center for National Employment Law Project et al. (2009).

[8] Weil, *How to Make Employment Fair*, *supra* note 3.

[9] *See*, *e.g.*, Ruckelshaus, et al. *Who's the Boss*, *supra* note 2, at 27-31; Alan B. Krueger & Orley Ashenfelter, *Theory and Evidence on Employer Collusion in the Franchise Sector* (National Bureau of Economic Research, Working Paper No. 24831, 2018).

[10] *See*, *e.g.*, Rebecca Smith & Claire McKenna, *Temped Out: How the Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers*, National Employment Law Project, at 11 (Sept. 2, 2014), https://www.nelp.org/wp-content/uploads/2015/02/Temped-Out.pdf.

[11] Bernhardt, et al., *supra* note 7.

[12] *See, e.g.*, Elizabeth Cox & Chloe N. East, *Labor Market Impacts of ICE Activity in Trump 2.0* (National Bureau of Economic Research, Working Paper No. 35129, 2026), https://www.nber.org/papers/w35129?utm_campaign=ntwh&utm_medium=email&utm_source=ntwg5.

[13] Rebecca Smith, et al. *ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights*, National Employment Law Project, at 6 (Oct. 2009), https://s27147.pcdn.co/app/uploads/2015/03/ICED_OUT.pdf.

II. The Proposed Rule is contrary to the broad statutory intent of the FLSA, Supreme Court precedent and federal circuit court authority, and longstanding DOL policy.

A. The Proposed Rule ignores that Congress intended FLSA to be read broadly to cover a range of employment relationships.

FLSA's definitions of covered employment and employers have not changed since the law's enactment in 1938, and companies have been operating under these rules for over 80 years.[14] The legislative history of the FLSA demonstrates Congress' intent "to cover businesses [that] allow work to be done on their behalf and" have the power to "prevent wage and hour abuses, regardless of indirect business relationships and business formalities." *New York v. Scalia*, 490 F. Supp. 3d 748, 780 (S.D.N.Y. 2020) (citing Kati L. Griffith, *The Fair Labor Standards Act at 80: Everything Old Is New Again*, 104 Cornell L. Rev. 557, 571 (2019)). To effectuate these goals, Congress adopted expansive definitions of "employer" ("any person acting directly or indirectly in the interest of an employer in relation to an employee," 29 U.S.C. § 203(d)) and "employ" ("to suffer or permit to work," *id.* § 203(g)). Indeed, the Supreme Court observed that the "striking breadth" of the express meaning of "employ" under the statute "stretches the meaning of 'employee' to include 'some parties who might not qualify as such under a strict application of traditional agency law principles.'" *Nationwide Mut. Ins. Co. v. Darden,* 503 U.S. 318, 326 (1992) (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947)). Appellate courts consistently have held the same.[15]

Accordingly, the Proposed Rule's narrow reading of what entities will and will not qualify as an "employer" contravenes the plain language of FLSA and Congress's intent.

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[14] The MSPA was enacted in 1983 and "uses the same definition of 'employ' as the FLSA." 29 U.S.C. § 1802(5); *Scalia*, 490 F. Supp. 3d at 759. Enacted in 2022, the PUMP for Nursing Mothers Act amended the FLSA to extend lactation break time and private space protections to nearly all employees and as such, uses the same definitions. 29 U.S.C. § 218d.

[15] *See, e.g., Salinas v. Com. Interiors, Inc*., 848 F. 3d 125, 137 (4th Cir. 2017) (holding that "Congress inten[ded] that the FLSA's definition of 'employee' encompass a broader swath of workers than would constitute employees at common law. *See Darden*, 503 U.S. at 326, 112 S. Ct. 1344."); *Garcia-Celestino v. Ruiz Harvesting, Inc*., 843 F.3d 1276, 1287 (11th Cir. 2016) ("[T]he 'suffer or permit to work' standard has been recognized as one of the broadest definitions of 'employ' possible."); *Reyes v. Remington Hybrid Seed Co*., 495 F.3d 403, 408 (7th Cir. 2007) ("Let us go back to the statute, which says that '"[e]mploy" includes to suffer or permit to work.' This is 'the broadest definition . . . ever included in any one act.'") (internal citations omitted); *Zheng v. Liberty Apparel Co., Inc*., 355 F. 3d 61, 66 (2d Cir. 2003) ("[The] definition [of 'suffer or permit to work'] is necessarily a broad one, in accordance with the remedial purpose of the FLSA."); *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997) ("This court has recognized that the concept of joint employment should be defined expansively under the FLSA . . . ."); *Hodgson v. Griffin & Brand of McAllen, Inc*., 471 F.2d 235, 237 (5th Cir. 1973) ("Whether appellant is an employer of the harvest workers does not depend on technical or 'isolated factors but rather on the circumstances of the whole activity.'") (internal citations omitted).

B. The Proposed Rule improperly rejects the well-established "economic reality" test for determining an employment relationship adopted by the Supreme Court, appellate courts, and DOL for decades.

The Proposed Rule also ignores decades of controlling Supreme Court precedent, circuit court authority, and longstanding DOL policy. Whether an employer-employee relationship exists under FLSA "'does not depend on . . . isolated factors but rather upon the circumstances of the whole activity.'" *Scalia*, 490 F. Supp. 3d at 758 (quoting *Rutherford Food*, 331 U.S. at 730). This is known as the "economic reality" test, which looks to multiple factors "rather than 'technical concepts'" to determine if an employment relationship exists under the FLSA. *Scalia*, 490 F. Supp. 3d at 758 (quoting *Goldberg v. Whitaker House Co-op, Inc.*, 366 U.S. 28, 33 (1961) (internal citations omitted)). *See also Falk v. Brannan*, 414 U.S. 190, 195 (1973). The vast majority of circuits have adopted this multi-factor approach—in many cases, by expressly rejecting the narrow four-factor test identified in *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983), and adopted by DOL in the Proposed Rule.[16]

DOL first recognized the concept of joint employment in 1939, just one year after FLSA's enactment, and continued to approve and expound upon the joint employment doctrine over the next eight decades—both under FLSA and the MSPA, enacted in 1983 and incorporating FLSA's definition of "employ." *See Scalia*, 490 F. Supp. 3d at 758-61 (detailing history of DOL interpretation, guidance, and regulation). Explicit in DOL's joint employment analysis was the express adoption of the "economic reality" test to determine whether an employment relationship exists. *Id.* (internal citations omitted). DOL has recognized that such

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[16] *Manning v. Boston Med. Ctr. Corp.*, 725 F.3d 34, 46 (1st Cir. 2013) (noting that the court applies the "economic reality" test plus additional factors added in *Baystate Alt. Staffing, Inc. v. Herman*, 163 F.3d 668 (1st Cir. 1998)); *Barfield v. N.Y.C. Health and Hosps. Corp.*, 537 F.3d 132 (2d Cir. 2008) (applying the "nonexclusive and overlapping set of factors" articulated in *Zheng v. Liberty Apparel Co. Inc.*, 355 F.3d 61, 72 (2d Cir. 2003), in line with "the economic realities test mandated by the Supreme Court"); *Johnson v. Nat'l Collegiate Athletic Ass'n*, 108 F.4th 163, 176-77 (3rd Cir. 2024) (vacating and remanding, requiring the district court to look to the "economic realities of the relationship" between college athletes and their schools for purposes of deciding whether college athletes are employees under the FLSA); *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125, 136-37 (4th Cir. 2017) (rejecting *Bonnette* and identifying other circuits' supplementation of it; "We agree that *Bonnette*'s reliance on common-law agency principles does not square with Congress's intent" in defining the employment relationship); *Klick v. Cenikor Found.*, 94 F.4th 362, 369 (5th Cir. 2024) (applying the "economic reality" test, which depends on "the totality of the circumstances"); *Keller v. Miri Microsystems LLC*, 781 F.3d 799 (6th Cir. 2015) (applying six factors in its application of the economic reality test); *Reyes v. Remington Hybrid Seed Co.*, 495 F.3d 403, 407-09 (7th Cir. 2007) (following *Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1974)); *Hollis v. R&R Rest., Inc.*, 159 F.4th 677, 686 (9th Cir. 2025) ("this court has applied the economic realities test [to determine whether an individual is an employee or an independent contractor under the FLSA], which provides that 'employees are those who as a matter of economic reality are dependent upon the business to which they render service'"); *Acosta v. Jani-King of Oklahoma, Inc.*, 905 F.3d 1156, 1159 (10th Cir. 2018) ("It is well settled that the economic realities of an individual's working relationship with the employer—not necessarily the label or structure overlaying the relationship—determine whether the individual is an employee under the FLSA."); *Layton v. DHL Express (USA), Inc.*, 686 F.3d 1172, 1176–77 (11th Cir. 2012) (applying an eight-factor test, with five factors that derive from regulations implementing the MSPA and speak to many of the considerations addressed by the *Bonnette* factors, designed to assess whether a worker is "economically dependent" on a putative joint employer); *Mills v. Anadolu Agency NA, Inc.*, 105 F.4th 388 (D.C. Cir. 2024) (applying the economic reality test developed in *Morrison v. Int'l Programs Consortium, Inc.*, 253 F.3d 5 (D.C. Cir. 2001), to determine whether a worker is an independent contractor or an employee).

breadth is appropriate given that "the traditional employment relationship of one employer employing one employee is less prevalent," and that "the growing variety and number of business models and labor arrangements have made joint employment more common." DOL Administrator's Interpretation 2016-1, 2016 WL 284582, at *1 (Jan. 20, 2016) (internal citations omitted).

Without acknowledgment of the prevalence of workplace fissuring or its harms to workers, the Proposed Rule departs from these longstanding interpretive principles and the well-settled "economic reality" framework. It adopts a narrower, four-factor test: whether the putative joint employer (1) hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records. These are the same four factors from the 2020 Final Rule that the *Scalia* court rejected as "impermissibly narrow" because they are "a proxy for control," 490 F. Supp. 3d at 786, and control is the touchstone of the common-law employment standard that FLSA displaced. *Id.* at 787.[17]

The Proposed Rule gives lip service to remedying the fatal flaws of the 2020 Final Rule by alluding to additional considerations that that rule categorically excluded, but the four factors remain dispositive; indeed, the Proposed Rule directs that a unanimous finding on the four factors establishes a substantial likelihood of finding, or rejecting, joint employment. Section 791.115(e). To name just a few examples, the 2020 Rule prohibited consideration of an employee's economic dependence on the potential joint employer, which the district court held contradicted case law and DOL's own views. *Scalia*, 490 F. Supp. 3d at 790. The Proposed Rule acknowledges that economic dependence may be considered as an additional factor, but then states that economic dependence carries less weight than the four factors, and is not the "ultimate question" of the joint employer analysis. Section 791.115(e). The 2020 Final Rule required a joint employer to actually exercise control over employees, prohibiting the consideration of "reserved control"; the Proposed Rule advises that reserved control is "relevant"—but then dismisses it: "[T]he potential joint employer's actual exercise of control is more relevant than such ability, power, or right." Section 791.115(c).

Moreover, like the 2020 Final Rule, the Proposed Rule deems *per se* irrelevant certain categories of evidence tending to show economic dependence of the employee on the putative joint employer. Section 791.115(f). While the Proposed Rule excludes just three of the four indicia of dependence that the 2020 Final Rule excluded, it does not cure the foundational error of ignoring evidence that both DOL and the Supreme Court repeatedly have deemed relevant to determining joint employment. *Scalia*, 490 F. Supp. 3d at 790-91 (internal citations omitted). So, too, does the Proposed Rule "exclude[ ] certain employer characteristics [and certain business

[17] We note that DOL has fallen far short of its duty to provide a "reasoned explanation" for its rejection of FLSA's legislative history, and its departure from decades of Supreme Court and DOL authority favoring a broad reading of FLSA's (and MSPA's) protections using a totality of the circumstances approach, in which no particular factor is dispositive. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). *Accord Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 917 (2025). That "reasoned explanation" specifically must account for the agency's "disregarding facts and circumstances that underlay or were engendered by the prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). Under these standards, DOL's mere invocation of disparate circuit decisions about the joint employer doctrine, and the need for uniformity, is insufficient to justify its adoption of a uniform standard that affords workers *fewer* protections in an increasingly fissured workplace.

models] as irrelevant to the joint employer analysis," *id.*, deeming them neither "more or less likely" to show a joint employment relationship. Section 791.125. These include "operating as a franchisor," imposing contractual obligations to maintain quality control, and providing health benefits to employees. *Id.*

While the foregoing standards apply to "vertical" joint employment, which is the context in which workplace fissuring most commonly occurs—*i.e.*, where a worker performs labor for an intermediary entity, such as a subcontractor or franchisee, that also benefits another entity or entities—we note that the Proposed Rule's directives with respect to "horizontal" joint employment also are deficient. In the horizontal model, a worker performs labor for two or more associated companies in the course of a single work week; where those entities are deemed to be joint employers, the worker's hours are combined, as if the labor were performed for a single entity. The Proposed Rule's horizontal joint employment standard lists just three factual scenarios that warrant the conclusion that employers are "sufficiently associated" to be deemed joint employers: "(1) There is an arrangement between them to share the employee's services; (2) One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or (3) They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer." Section 791.120(a). But this list is unduly limited; it does not even mention that DOL has enumerated no fewer than nine additional categories of relevant evidence in showing joint employment, including administrative intermingling of the employers' operations, the sharing of clients or customers, and the existence of any agreements between the potential joint employers. Wage and Hour Division (WHD) Opinion Letter FLSA2005-17NA, 2005 WL 6219105, at *2 (June 14, 2005) (internal citations omitted).[18] Moreover, as with the standard applicable to finding vertical joint employment, the Proposed Rule inserts language categorically devaluing the relevance of "[c]ertain business relationships" in determining horizontal joint employment. Section 791.120(b).[19]

In sum, even if the Proposed Rule does not categorically prohibit the consideration of additional factors, as the 2020 Final Rule did, it still makes it abundantly clear that the discredited four-factor test, and thus the common law right to control, is the main determinant in the analysis. In so doing, the Proposed Rule ignores congressional intent, Supreme Court precedent, and decades of DOL authority, and should be withdrawn.

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[18] Notably, the recent WHD Opinion Letter cited with approval by the Proposed Rule, 91 Fed. Reg. 21898—Opinion Letter FLSA2025-5—itself specifically cites Opinion Letter FLSA2005-17NA, as well as its recognition that "potentially relevant factors to prove the sufficient association of joint employers include 'whether there are common officers or directors of the companies' and 'the nature of the common management support provided'").

[19] Even assuming the horizontal joint employment standard were correctly stated in the Proposed Rule, the Proposed Rule's defects with respect to vertical joint employment also doom its horizontal joint employment standard—as DOL found in rescinding the 2020 Final Rule's standard for horizontal joint employment. The vertical and horizontal joint employer standards remain "intertwined" with respect to the "consequences" of joint employment and because one of the examples illustrating horizontal joint employment also "implicat[es]" potential vertical joint employment. 86 Fed. Reg. 40943 (July 30, 2021). *See also* Proposed Rule, Section 791.120(c)(1).

III. The Proposed Rule will impose significant additional costs on workers and benefit employers that violate statutory directives.

The Proposed Rule contends that "nothing in the proposed rule would reduce the wages owed to employees under the FLSA or MSPA." 91 Fed. Reg. 21909. However, just because the Proposed Rule doesn't change the wages due to a worker under these laws, it still would result in "transfers" from workers to employers—in other words, it still would result in workers losing more pay and employers keeping more of it. The Proposed Rule vastly understates the extent of these transfers, but nevertheless concedes that, "[b]ecause the proposed rule's analysis might narrow the scope of vertical joint employment for some workers . . . , it could reduce, in some cases, the number of persons who are responsible for ensuring that employee rights under [FLSA, FMLA, and MSPA] are fulfilled, including the payment of owed wages." *Id.* at 21910. Indeed, the Proposed Rule would give employers an incentive to further "fissure" their workplaces through restructuring and outsourcing, thereby suppressing workers' wages and permitting companies to avoid liability for statutory violations—even while still substantially controlling the work, and working conditions, of those employees. The Proposed Rule would also put more workers at risk of wage theft. Indeed, the Economic Policy Institute estimates that the Proposed Rule puts workers at risk of losing nearly $1 billion annually, from both workplace fissuring and wage theft combined.[20]

IV. The Proposed Rule will weaken statutory protections vital to women workers.

The FLSA encompasses both the Equal Pay Act of 1963 (EPA) and the PUMP for Nursing Mothers Act, two laws that ensure that women are treated equally in the workplace, imposing protections against pay discrimination and requiring employers to accommodate breastfeeding workers. The Family and Medical Leave Act (FMLA) affords eligible workers up to 12 weeks of job-protected, unpaid leave to care for themselves or a family member or to welcome a child. And the MSPA protects the wages and working and housing conditions of certain agricultural laborers, a workforce that includes a significant population of women. The Proposed Rule's drastic narrowing of the joint employer doctrine will negatively impact millions of women workers' ability to vindicate these vital statutory rights.

The Fair Labor Standards Act. Women's labor historically has been devalued. For generations, ingrained stereotypes about women's abilities and interests coupled with overtly exclusionary policies confined women to a limited universe of low status, typically low-paying jobs.[21] As a consequence of this history, as well as due to ongoing systemic barriers including discrimination, the U.S. workforce remains profoundly sex-segregated. Women, particularly women of color, disproportionately work in low-paid, fissured industries, such as home health care, domestic work, hospitality, customer service, janitorial, personal care services, and app-

[20] Economic Policy Institute, Comment Letter, *supra* note 4.

[21] *See, e.g., Dothard v. Rawlinson*, 433 U.S. 321 (1977) (under Title VII, rejecting exclusion of women as correctional officers in "contact positions"); *Goesaert v. Cleary*, 335 U.S. 464 (1948) (upholding statute prohibiting women from being bartenders unless their husband or father owned the bar); *Muller v. Oregon*, 208 U.S. 412 (1908) (upholding state law imposing limits on number of hours women could work); *Bradwell v. Illinois*, 83 U.S. 130 (1872) (upholding state law prohibiting women from practicing law).

based platform work.[22] Low-wage jobs frequently are physically demanding, even dangerous, and overwork exponentially increases workers' risk of injury.[23]

For all of these reasons, FLSA's protections are vital to women. Their concentration in low-wage fields, coupled with their frequent responsibilities as sole breadwinners and family caregivers, impose distinct, severe economic precarity—making access to a mandated minimum wage and time-and-a-half overtime pay critically important to their and their families' survival. Yet such vulnerable workers—disproportionately women of color and immigrants—also face outsized risk of abuse. To name just one example, home care workers routinely are victimized by wage theft due to employers' FLSA violations[24]; in one recent study, only half of respondents who worked more than 40 hours a week received time-and-half pay "sometimes or always," and 40 percent reported *never* receiving overtime pay.[25] Moreover, when employers are not obligated to pay overtime, they are incentivized to demand excessive hours of low-wage workers, with predictably adverse effects on their family lives and health.[26] All of these risks have been demonstrated to be exacerbated by fissured work relationships, where fly-by-night employers prioritize low costs over workers' earnings and well-being.

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[22] *See, e.g.*, National Partnership for Women & Families and National Women's Law Center, *Why Women Need the U.S. Department of Labor's Independent Contractor Rule* (Mar. 2024), https://nationalpartnership.org/wp-content/uploads/women-need-dol-independent-contractorrule.pdf; Jessica Mason & Katherine Gallagher Robbins, *Women's Work is Undervalued, and It's Costing Us Billions* (Mar. 2023), https://nationalpartnership.org/wp-content/uploads/2023/04/womens-work-is-undervalued.pdf; Jennifer Sherer & Margaret Poydock, *Flexible Work Without Exploitation* (Feb. 23, 2023), https://www.epi.org/publication/state-misclassification-of-workers/.

[23] *See, e.g.*, UCLA LOSH, NDWA & CDWC, *Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California*, UCLA LOSH, Research Brief (July 2020), https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSHJune-2020-1.pdf; Howard Greenwich & David Mendoza, *Our Pain, Their Gain: The Hidden Costs of Profitability in Seattle Hotels*, Puget Sound Sage (Apr. 2012), https://pugetsoundsage.org/wp-content/uploads/2014/10/Our-Pain-Their-Gain-The-Hidden-Costs-of-Profitability-in-Seattle-Hotels.pdf.

[24] *See, e.g.*, U.S. Dep't of Lab., *U.S. Department of Labor Finds Increased Number of Care Industry Employers Engaged in Wage Theft, Recovers $735K in Wages, Damages in Recent Cases* (Dec. 30, 2024), https://www.dol.gov/newsroom/releases/whd/whd20241230 ("A recent series of U.S. Department of Labor investigations shows a substantial increase in the number of care industry employers in California who are exploiting workers by underpaying them deliberately in violation of federal regulations."); Ethan Geringer-Sameth, *Home Care Agencies Lead New York City in Wage Theft Violations*, Crain's New York Business (Sept. 12, 2024), https://www.crainsnewyork.com/health-pulse/wage-theft-rampant-home-health-care-industry ("From 2020 to 2022, the top seventeen wage theft offenders investigated by the state Department of Labor were all home health care agencies."); USA Employment Lawyers, *Home Health Care Violations* (Feb. 3, 2025), https://www.usaemploymentlawyers.com/blog/2025/february/home-health-care-violations/ (in the year of its inception, a DOL initiative to address wage violations in healthcare completed 1,600 investigations, finding violations in "80% of investigations in the home healthcare and nursing care sectors.").

[25] Anastasia Christman & Caitlin Connolly, *Surveying the Home Care Workforce: Their Challenges & the Positive Impact of Unionization*, National Employment Law Project, Policy & Data Brief (Sept. 22, 2017), https://www.nelp.org/insights-research/surveying-the-home-care-workforce/.

[26] *See, e.g.*, Udochi Onwubiko, *They're Coming for Your Overtime Pay*, National Partnership for Women & Families, Issue Brief at 2 & nn. 5-6 (July 2025), https://nationalpartnership.org/wp-content/uploads/theyre-coming-for-your-overtime-pay.pdf; Allard Dembe, J. Bianca Erickson, Rachel G. Delbos, & Steven M. Banks, *The Impact of Overtime and Long Work Hours on Occupational Injuries and Illnesses: New Evidence from the United States*, 62 Occup Environ Med. 588, 588-97 (2005).

The Equal Pay Act. The EPA, which was enacted in 1963, makes it unlawful for employers to pay unequal wages and other compensation to men and women who perform substantially equal work in the same establishment.[27] The EPA's mandate, and its vigorous enforcement, remain imperative. Women working in the United States still lose over $1.9 trillion every year as a result of the gender wage gap.[28] Indeed, although the gender wage gap had been narrowing from the time of the EPA's enactment until 2022—albeit glacially—that trend actually *reversed* in 2023, and worsened in 2024.[29] Even when women have gained access to male-dominated jobs, they routinely are paid lower wages than their male peers.[30] Notably, the converse also is true: men working in female-dominated fields still out-earn women.[31] All of these disparities are exacerbated for Black, Latina, and Asian American women, who lose hundreds of thousands of dollars in earnings over the course of their working lives as a result of the pay gap.[32]

The PUMP for Nursing Mothers Act. The PUMP for Nursing Mothers Act amended the FLSA in 2022 to extend lactation break time and private, non-bathroom pumping space protections to nearly all employees—a significant expansion of the law's prior coverage.[33] The law's accommodation requirements must be provided during the course of the work day, at the physical work site. By narrowing the joint employment standard, the Proposed Rule puts lactating workers' needs solely in the hands of the entity with the most control over a worker's day-to-day assignments and work location. This risks dire effects for lactating workers. Take, for example, a worker who provides custodial services at multiple locations but who is not on the payroll of the entities on whose sites she works. She may receive her paycheck from a cleaning contractor, but it is the hotel, hospital, or office building where she works that sets her schedule, dictates how long she spends in each room, and determines whether a private, non-bathroom space is available on the premises. Under a robust joint employer standard, the facility operator would share responsibility for ensuring she has the break time and private, hygienic space to pump that the PUMP for Nursing Mother Act guarantees (and would share responsibility for remedying any deprivation of those rights). Under the Proposed Rule, however, that operator can disclaim any employment relationship—and with it, any obligation to accommodate her. The result is that the worker is deprived of the PUMP for Nursing Mothers Act's protections entirely.

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[27] 29 U.S.C. § 206(d). *See also* U.S. Equal Employment Opportunity Commission, "Equal Pay/Compensation Discrimination," https://www.eeoc.gov/equal-paycompensation-discrimination.

[28] Tori Coan & Jessica Mason, *America's Women and the Wage Gap* (Mar. 2026), https://nationalpartnership.org/wp-content/uploads/2023/02/americas-women-and-the-wage-gap.pdf.

[29] Sarah Javaid, *A Window Into the Wage Gap*, National Women's Law Center, Fact Sheet at 6 n.ii (Jan. 2026), https://nwlc.org/wp-content/uploads/2025/02/2026-Window-into-the-Wage-Gap-Factsheet.pdf (in 1963, women earned 59 cents, on average, for every dollar earned by men) (citing U.S. Census Bureau Current Population Survey Historical Data, Table O-38: Full-Time, Year-Round Workers by Median Earnings and Sex, https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html).

[30] Ariane Hegewisch & Cristy Mendoza, *Women Earn Less Than Men Whether They Work in the Same or Different Occupations*, Institute for Women's Policy Research, Fact Sheet #C532 at 1-5, 4 tbl. 2 (Mar. 2025), https://iwpr.org/wp-content/uploads/2025/03/Occupational-Wage-Gap-Fact-Sheet-2025-1.pdf.

[31] *Id.* at 1-5, 3 tbl. 1.

[32] *See*, *e.g.*, Robin Bleiweis, Jocelyn Frye & Rose Khattar, *Women of Color and the Wage Gap* (Nov. 17, 2021) https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/.

[33] U.S. Dep't of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2023-02: Enforcement of Protections for Employees to Pump Breast Milk at Work (May 17, 2023), https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-2.pdf.

It is well established that workers who need but lack access to lactation accommodations are often forced to leave the workforce altogether,[34] compounding the inequities that women—and particularly women of color—already face as a result of the gender pay gap. Restricting access to PUMP for Nursing Mothers Act protections will also harm maternal and infant health by decreasing breastfeeding rates. Research consistently demonstrates that workplace lactation support is among the strongest predictors of breastfeeding duration,[35] and breastfeeding is associated with meaningful health benefits for both infants and mothers, including reduced rates of infection, chronic disease, and cancer.[36] DOL should not adopt a rule that will undermine clear public health goals by decreasing breastfeeding rates.

The Family and Medical Leave Act. In 1993, Congress passed the FMLA[37] with the express purpose of promoting equal employment opportunity for women and men. Congress noted that "the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men."[38] This unfortunately continues to hold true, making FMLA leave critical for women; in 2023, women performed 65 percent of unpaid care work.[39]

Research by the National Partnership for Women & Families estimates that the FMLA has been used about 566 million times by working people who needed to care for their own health or the health of their families, including by 15 million workers in 2025.[40] Yet too many workers—especially workers of color—cannot access FMLA leave. About 44 percent of workers are not protected by the FMLA because of the law's eligibility requirements.[41] Under the FMLA, employees are eligible for leave if they have worked for their employer for 12 months, have worked for at least 1,250 hours in the last 12 months, and work at a worksite with at least 50 employees within a 75 mile radius.[42] DOL's Proposed Rule could make it even harder for workers to meet the employer threshold and hours requirements.

When two or more employers jointly employ a worker, all employers must count that employee towards their coverage threshold.[43] The Proposed Rule's narrowing of joint employer

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[34] Liz Morris, Jessica Lee & Joan C. Williams, *Exposed: Discrimination Against Breastfeeding Workers*, Center for WorkLife Law, UC Law SF (2019), https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf.

[35] *See*, *e.g.*, Julia H. Kim, Jong C. Shin & Sharon M. Donovan, *Effectiveness of Workplace Lactation Interventions on Breastfeeding Outcomes in the United States: An Updated Systematic Review*, 35 J. of Hum. Lactation 100, 100-13 (2019), https://pubmed.ncbi.nlm.nih.gov/29928834/.

[36] Andrea C. Masi & Christopher J. Stewart, *Role of Breastfeeding in Disease Prevention*, 17 Microbial Biotechnology e14520 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11214977/.

[37] 29 U.S.C. § 2601(b)(5).

[38] *Id*. § 2601(a)(5).

[39] Katherine Gallagher Robbins & Jessica Mason, *Americans' Unpaid Caregiving is Worth More than $1 Trillion Annually – and Women are Doing Two-Thirds of The Work*, National Partnership for Women & Families: Blog (June 27, 2024), https://nationalpartnership.org/americans-unpaid-caregiving-worth-1-trillion-annually-women-two-thirds-work/.

[40] National Partnership for Women & Families, *Key Facts: The Family and Medical Leave Act* (Jan. 2026), https://nationalpartnership.org/report/fmla-key-facts/.

[41] *Id.*

[42] 29 U.S.C. §§ 2611(2)(A)-(B), (4)(A).

[43] 29 CFR § 825.106(d).

liability risks employers undercounting their employees and concluding they are not covered by the law, denying workers leave when they need it. Already, 15 percent of the workforce is not eligible for FMLA because they work for a small employer.[44] The Proposed Rule's narrowing of horizontal joint employment also risks employers denying leave by undercounting the number of hours an employee employed by associated employers has worked in the previous 12 months. Many low-wage women workers work at multiple related employers, such as hospitality employees working at multiple related restaurants or home care workers who serve many clients in the course of a week.

Denying more workers job-protected FMLA leave will mean more women will be forced to choose between caregiving responsibilities and their jobs—risking families' well-being, on the one hand, and women's workforce progress, on the other.

The Migrant and Seasonal Agricultural Worker Protection Act. The MSPA was enacted in 1983 to provide essential employment protections to migrant and seasonal agricultural workers regarding wages, housing, and transportation safety.[45] These workers are some of the lowest-paid, most vulnerable, and mistreated with respect to wages and terms of employment. In 2022, 26.4 percent of U.S. farm laborers were women, and that number continues to climb.[46] Agricultural work is one of the most physically demanding and hazardous occupations, and women farmworkers face distinct barriers and occupational stressors. These workers often face challenges related to their working conditions and employment status, including inadequate and inequitable wages, job instability, and irregular working hours and encounter hazardous working conditions including toxic chemicals and heat exposure, which further contribute to their vulnerability, which are exacerbated during pregnancy.[47] Key provisions of MSPA are intended to protect farmworkers from the abuses of farm labor contractors by requiring registration of labor contractors and ensuring that promised working arrangements, such as wages, housing, and transportation, are provided to migrant and seasonal workers.

The Proposed Rule would undermine congressional intent and legal authority by enabling agribusiness to more easily disclaim responsibility for farmworkers, thus depriving them of these vital protections. By elevating factors that employers can easily manipulate to avoid their legal obligations, workers will have an uphill battle to prove an entity is an employer under these statutes. The Proposed Rule will ensure that women who experience rampant workplace violations have far less recourse to justice to vindicate their rights.

V. Conclusion

DOL must not constrict the joint employment standard. Doing so would create incentives for employers to contract away their legal obligations and immunize themselves from

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[44] National Partnership for Women & Families, *Key Facts: The Family and Medical Leave Act* (Jan. 2026), https://nationalpartnership.org/report/fmla-key-facts/.

[45] 29 U.S.C. § 1801.

[46] Farm Labor, USDA Economic Res. Serv. (updated Nov. 18, 2025), https://www.ers.usda.gov/topics/farm-economy/farm-labor.

[47] *See*, *e.g.*, Alexis J. Handal, et al., *Experiences of Women Farmworkers in Michigan: Perspectives from the Michigan Farmworker Project*, 13 Am. J. Community Psychol. 292, 292-304 (2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12174754/.

responsibility for the workplace from which they profit. It also will degrade worker conditions, permit rampant wage theft, and make it harder for workers to access lactation accommodations and job-protected leave, to the detriment of millions of women and their families. We urge DOL to withdraw the Proposed Rule, maintain the current joint employment standard, and reject any attempt to establish a standard that denies workers recourse to enforce their rights under the FLSA, FMLA, and MSPA.

Sincerely,

ACLU Women's Rights Project
Economic Policy Institute
National Partnership for Women & Families
National Women's Law Center
WorkLife Law

National Organizations:

A Better Balance
Alianza Nacional de Campesinas
Care in Action
Coalition on Human Needs
Equal Rights Advocates
Family Values @ Work
Institute for Women's Policy Research
Justice for Migrant Women
MomsRising
National Domestic Workers Alliance
National Employment Lawyers Association
National Employment Law Project
National Institute for Workers' Rights
Oxfam America
Paid Leave for All Action
Reproductive Freedom for All
RootsAction
Service Employees International Union
U.S. Breastfeeding Committee

State and Local Organizations:

BreastfeedLA (CA)
California Work & Family Coalition (CA)
Kansas Breastfeeding Coalition (KS)
Ohio Breastfeeding Alliance (OH)
Serving At-risk Families Everywhere, Inc. (SC)