



January 24, 2025

*via U.S. Mail*

Attorney General-Designate Bondi  
Acting Attorney General McHenry  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Secretary-Designate Chavez-DeRemer  
Acting Secretary Micone  
United States Department of Labor  
Office of the Secretary  
200 Constitution Avenue, N.W.  
Washington, DC 20210

*Re: Employee or Independent Contractor Classification Under the Fair Labor Standards Act*

Dear Attorney General-Designate Bondi, Secretary-Designate Chavez-DeRemer, Acting Attorney General McHenry, and Acting Secretary Micone:

We write on behalf of our clients, Service Employees International Union, National Employment Law Project, Economic Policy Institute, Restaurant Opportunity Centers United, and REAL Women in Trucking.

These organizations represent and advocate for working Americans and their families across numerous industries and all fifty states. Working people are the foundation of America and American success. Ensuring fair wages, benefits, and workplace standards are essential for workers, the economy, and the whole nation. National prosperity depends not only on workers' labor, but on their health, their safety, and their own financial well-being.

President Trump has said that his administration will "grow wages and improve working conditions." But our clients are all too aware of the regulatory record of President Trump's first administration and the dramatically anti-worker agenda of Project 2025. President Trump's nominee for Secretary of Labor, former Representative Chavez-DeRemer, has a record of supporting American workers, including her support for the Protecting the Right to Organize Act, with its inclusion of a strong standard to prevent misclassification of workers, but it remains to be seen whether she will be able to act on her views. If the administration intends to make good

on the President's promises to workers, it must, among other things, vigorously defend the Department of Labor's recent rule establishing a fair test for determining whether workers are employees or independent contractors.

The first Trump administration's January 7, 2021 "Independent Contractor Status Under the Fair Labor Standard Act" Rule, 86 Fed. Reg. 1168, adopted a test for determining whether a worker is an independent contractor or an employee which unfairly and unlawfully tipped the scales in favor of incorrectly classifying workers as independent contractors. Misclassification deprives workers of benefits and income to which they are lawfully entitled, increases reliance on public benefits, and harms the broader American economy. On January 10, 2024, the Department of Labor issued the much-needed "Employee or Independent Contractor Classification Under the Fair Labor Standards Act" Rule, 89 Fed. Reg. 1638, adopting a new test which correctly guides classification of workers and ensures that workers receive the benefits and compensation to which they are entitled.

The 2024 rule is the subject of numerous legal challenges, including several by powerful business interests working to protect their bottom line at the expense of workers. *See Frisard's Transportation, L.L.C. v. Department of Labor*, No. 23-30223 (5th Cir.); *Warren v. Department of Labor*, No. 24-13505 (11th Cir.); *Coalition for Workforce Innovation v. Walsh*, No. 1:21-cv-00130 (E.D. Tex.); *Littman v. Department of Labor*, No. 3:24-cv-00194 (M.D. Tenn.); and *Colt & Joe Trucking LLC v. Department of Labor*, No. 1:24-cv-00391 (D.N.M.). To date, the Department of Justice has vigorously defended the rule against these challenges. Our clients hope that the Department of Justice will continue this zealous defense, but the administration has not yet stated that it will do so.

If, however, the Trump administration intends not to defend the rule, or to do so with less than full vigor, institutions that actually wish to protect the interests of American workers will need to intervene in the pending litigations to defend this critical rule. We therefore ask that, by Friday, February 21, 2025, the Department of Justice advise undersigned counsel whether it intends to fully and vigorously defend the rule in each of the above-referenced cases. If the Department of Justice does not inform undersigned counsel of its intentions by that date, we will view that as a statement that the Department does not intend a vigorous defense of the rule.

If the Trump administration breaks its promise to working Americans and chooses not to fully defend the rule, we will. One or more of our clients or their members will seek to intervene to defend the rule and protect the interests of American workers.

If you have questions about our request, please feel free to contact undersigned counsel.

We look forward to your response.

Sincerely,

/s/ Mark B. Samburg  
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