DEMOCRACY FORWARD

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: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

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, and Restaurant Opportunity Centers United.

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. Yet despite historic wage growth over the past several years, low-wage American workers are still grossly underpaid. Ensuring fair wages is essential for the benefit of 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 that was not our clients' experience in his first administration, nor is it reflected in the dramatically anti-worker agenda of Project 2025. His 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, 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 requiring employers to provide fair compensation for low-wage workers' overtime work.[1]

The Department of Labor is charged with ensuring employers pay fair overtime wages. In 2016, the Department of Labor issued a rule[2] increasing the Fair Labor Standards Act overtime "salary test" threshold.[3] When a single district court struck down that rule, the first Trump administration did not defend it, but instead replaced the 2016 rule with its own 2019 "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" Rule, 84 Fed. Reg. 51230. The first Trump administration's rule did not deliver anything near fair pay for people working long hours. It set the threshold too low—less than 75% of the level in the 2016 rule—and, crucially, did not provide for an increase to the threshold as the cost of living increased.

The Department of Labor's much needed 2024 update to this rule provided for two successive increases to the threshold and for future periodic automatic updates to account for changes in earning data. The first of those three parts used the same methodology as the 2019 rule—setting the "salary test" threshold at "the 20th percentile of weekly earnings of full-time salaried workers in the South and/or in the retail industry nationally"—and simply updated the dollar amount to reflect current salary data. The 2024 rule's second increase meaningfully expanded overtime protections, providing overtime protection on the basis of salary to employees earning up to $1,128 per week (approximately $58,656 annually), compared to the 2019 rule's coverage only for employees earning up to $684 per week (approximately $35,568 annually). The 2024 rule provides much-needed overtime protections to millions of American workers who would not otherwise have it.

The 2024 rule is the subject of several legal challenges by employers seeking to protect their bottom lines at the expense of their employees' hard-earned wages. *See Texas v. Department of Labor*, No. 24-40777 (5th Cir.); *Flint Avenue, LLC v. Department of Labor*, No. 5:24-cv-00130 (N.D. Tex.); and *Association of Christian Schools International v. Department of Labor*, No. 1:24-cv-02618 (D.D.C.). 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.

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[1] The Department of Labor's April 26, 2024 "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees" Rule, 89 Fed. Reg. 32842.
[2] The Department of Labor's May 23, 2016 "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees" Rule, 81 Fed. Reg. 32391.
[3] Full-time employees who earn below the "salary test" threshold are generally eligible for overtime on the basis of salary, even if the nature of their job duties would not otherwise qualify them for overtime eligibility.

If, however, the Trump administration intends not to defend the 2024 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 this request, please contact undersigned counsel.

We look forward to your response.

Sincerely,

/s/ Mark B. Samburg
Mark B. Samburg
Senior Counsel
msamburg@democracyforward.org

Robin F. Thurston
Legal Director
rthurston@democracyforward.org

cc:

Courtney Dixon (Courtney.L.Dixon@usdoj.gov)
Julie Straus Harris (Julie.Straus.Harris@usdoj.gov)