

116TH CONGRESS
2D SESSION

H. R. 6245

To prohibit the Secretary of Labor from implementing or enforcing the final rule on joint employer status.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2020

Mr. KENNEDY introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To prohibit the Secretary of Labor from implementing or enforcing the final rule on joint employer status.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Upholding Worker
5 Protections Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that:

8 (1) Under the Fair Labor Standards Act
9 (FLSA), an employee can have joint employers who
10 are both responsible, individually and jointly, for

1 complying with the law’s minimum wage, overtime,
2 and child labor requirements.

3 (2) In adopting the FLSA, Congress estab-
4 lished a broad definition of “employ” to include “to
5 suffer or permit to work”. In using this definition,
6 Congress rejected the narrower common law stand-
7 ard of employment, which turns on the degree to
8 which the employer has control over an employee.

9 (3) As the Supreme Court noted in United
10 States v. Rosenwasser, the FLSA’s definition of em-
11 ployment is the “broadest definition that has ever
12 been included in any one act”. The breadth of the
13 FLSA’s employment standard was necessary to ac-
14 complish its goal of eliminating substandard labor
15 conditions.

16 (4) For decades, the Supreme Court and the
17 Circuit Courts of Appeals have effectuated
18 Congress’s intent to broadly define employment, and
19 thus joint employment, under the FLSA by applying
20 an economic realities test to determine whether the
21 employee is economically dependent on the potential
22 joint employer.

23 (5) On January 16, 2020, the Labor Depart-
24 ment published an interpretive regulation that seeks

1 to significantly limit joint employment liability under
2 the FLSA.

3 (6) The Labor Department’s interpretation con-
4 flicts with the FLSA, congressional intent, and judi-
5 cial precedent by narrowly restricting joint employ-
6 ment to a question of control and rejecting the eco-
7 nomic dependence inquiry.

8 (7) In recent decades, many employers have in-
9 creasingly moved away from the direct hiring of em-
10 ployees and instead engaged subcontracted workers,
11 temporary workers, and used franchisees, creating a
12 “fissuring” of the workplace. Workers in the fis-
13 sured workplace often have lower pay and limited
14 benefits, exacerbating income inequality.

15 (8) As an interpretive regulation, this rule does
16 not have the force of law, but will dictate how and
17 if the Department will continue to hold employers
18 accountable when they are jointly liable for FLSA
19 violations.

20 (9) The Labor Department’s flawed interpretive
21 rule could increase wage theft and workplace fis-
22 suring by incentivizing employers to outsource work
23 to labor intermediaries and subcontractors to avoid
24 FLSA liability. Increased use of labor intermediaries
25 or subcontractors that are prone to inadequate

1 FLSA compliance would leave workers vulnerable to
2 wage theft. If such entities are thinly capitalized,
3 workers may be unable to recover any back pay
4 owed.

5 (10) According the Economic Policy Institute,
6 increased wage theft and workplace fissuring under
7 this interpretive rule could cost workers more than
8 a billion dollars each year.

9 **SEC. 3. PROHIBITION ON IMPLEMENTING OR ENFORCING**
10 **FINAL RULE ON JOINT EMPLOYER STATUS.**

11 Notwithstanding any other provision of law, the Sec-
12 retary of Labor may not implement or enforce the final
13 rule on “Joint Employer Status under the Fair Labor
14 Standards Act” published by the Department of Labor in
15 the Federal Register on January 16, 2020 (85 Fed. Reg.
16 2820 et seq.).

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