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Daniel Navarrete
Director, Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor

Re: Comment Opposing Proposed Rule on Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act (RIN 1235-AA46)

Dear Mr. Navarrete:

The undersigned 36 organizations write to strongly oppose the Department of Labor's proposed rulemaking on independent contractor classification under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA). This proposal is inconsistent with longstanding Department interpretations, conflicts with established case law, and represents a significant step backward in ensuring that workers receive the full protections of federal labor standards. Withdrawing the myriad rights afforded by these statutes will have especially harmful consequences for the most vulnerable women workers and their families.

First, by narrowing the broad definition of "employ" under the FLSA, the proposed rule will exacerbate the misclassification of workers as independent contractors, thereby excluding them from core workplace protections. Employees are entitled to rights under the FLSA, FMLA, and MSPA; independent contractors are not. By adopting a framework that increases the likelihood of misclassification, the Department effectively narrows access to—among other vital statutory rights—the minimum wage, overtime pay, and job-protected leave. Moreover, because the FLSA encompasses both the Equal Pay Act[1] and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act,[2] diminishing FLSA entitlement also will strip workers of the right to be free from pay discrimination and to access workplace lactation accommodations. Such protections are essential to women's health, economic security, and continued labor force participation.

Second, the Department's proposal is inconsistent with decades of agency guidance and judicial precedent applying the "economic realities" test. In interpreting the FLSA's extraordinarily broad definition of "employ" as to "suffer or permit to work," courts have consistently emphasized a totality of the circumstances test, broader than the common law test, where the ultimate inquiry is whether a worker is economically dependent on an employer or in business for themselves.[3] The Department itself has historically interpreted this test in a manner

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[1] 29 U.S.C. § 206(d); 29 U.S.C. § 203(d)-(e); (g).
[2] 29 U.S.C. § 218d.
[3] See 29 U.S.C. § 203(g); Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947); Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318 (1992); Brock v. Superior Care, Inc., 840 F.2d 1054 (2d Cir. 1988).

that centers economic dependence and the remedial purpose of the FLSA.[4] The proposed rule departs from this approach by reweighting and reframing factors in ways that diminish the importance of dependence and invite a narrower, more employer-friendly analysis. For example, the proposed rule gives greater weight to two factors from the economic realities test—control and opportunity for profit or loss—and emphasizes the employer's actual practice as opposed to any reserved rights as most relevant to the analysis. This shift is particularly concerning given that the Department is rescinding the prior rulemaking and other guidance that more accurately reflected the totality of the circumstances approach endorsed by courts.

Third, the proposed alternative included in the rulemaking is similarly flawed and should be rejected.[5] The alternative retains structural features that weaken the economic realities test and elevate specific criteria over a totality of the circumstances analysis. The alternative does not adequately safeguard against misclassification or reflect longstanding case law.

Finally, from a gender equity perspective, the consequences of this rulemaking are profound.

For much of our nation's history, women's labor has been devalued, with women facing overt discrimination and being confined to a few, low-paying job categories.[6] Despite the outlawing of such practices by Title VII of the 1964 Civil Rights Act and enactment of the Equal Pay Act of 1963, women working in the United States already lose over $1.9 trillion every year as a result of the gender wage gap.[7] Indeed, even when women have gained access to male-dominated jobs, they routinely are paid lower wages than their male peers.[8] (Notably, the converse also is true: men working in female-dominated fields still out-earn women.[9]) These pay disparities are

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[4] See, e.g., U.S. Dep't of Labor, Wage and Hour Division, "WHD Fact Sheet #13," available at https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship; Administrator's Interpretation No. 2015-1, "The Application of the Fair Labor Standards Act's `Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors" (AI 2015-1), 2015 WL 4449086 (withdrawn June 7, 2017); Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 FR 1638.

[5] See https://www.federalregister.gov/d/2026-03962/p-275 ("Additionally, the Department seeks comment on whether further streamlining the "two core factor" analysis would provide even greater clarity and focus to the question whether an individual is an employee or independent contractor under the FLSA.").

[6] 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).

[7] Coan, T. & Mason, J. (2026, March.) *America's Women and the Wage Gap*. Retrieved 15 April 2026, from National Partnership for Women & Families website: https://nationalpartnership.org/wp-content/uploads/2023/02/americas-women-and-the-wage-gap.pdf

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

[9] *Women Earn Less*, supra note 8, at 1-5 & tbl.1.

even worse 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.[10]

Moreover, the U.S. workforce remains profoundly sex-segregated, with women, particularly women of color, disproportionately concentrated in low-paid, fissured industries where misclassification is already prevalent.[11] Misclassification is especially rampant in numerous occupational sectors where women are overrepresented: home health care, domestic work, hospitality, customer service, janitorial, personal care services, and app-based platform work.[12] Increased misclassification costs workers in lost wages and benefits.[13] It can also incentivize employers to demand excessive hours of low-wage workers, with predictably adverse effects on their family lives and health.[14] Indeed, low-wage jobs frequently are physically demanding, even dangerous, and overwork exponentially increases workers' risk of injury.[15] In low-paid sectors employers have strong incentives to label more workers as independent contractors to avoid compliance with wage and hour and other laws. The proposed rule risks reinforcing these practices by creating ambiguity and elevating factors that employers can easily manipulate to avoid their legal obligations.

Adding additional losses from misclassification makes it even harder for women–particularly those laboring in low-wage jobs–to support themselves and their families.[16] Moreover, increased

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[10] Bleiweis, R., Frye, J. & Khattar, R. (2021, Nov. 17). *Women of Color and the Wage Gap*. Retrieved 17 April 2026, from Center for American Progress website: https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/.

[11] Cid-Martinez, I., Mast, N., Poydock, M. & Wilson, V. (2026, April 15). *Misclassifying workers as independent contractors is costly for workers and social insurance systems*. Retrieved 15 April 2026, from Economic Policy Institute website: https://www.epi.org/publication/misclassifying-workers-as-independent-contractors-is-costly-for-workers-and-social-insurance-systems/

[12] Ibid.; National Partnership for Women & Families and National Women's Law Center. (2024, March). *Why Women Need the U.S. Department of Labor's Independent Contractor Rule*. Retrieved 15 April 2026, from https://nationalpartnership.org/wp-content/uploads/women-need-dol-independent-contractor-rule.pdf; Mason, J. & Robbins, K. (2023, March). *Women's Work is Undervalued, and It's Costing Us Billions*. Retrieved 15 April 2026, from https://nationalpartnership.org/wp-content/uploads/2023/04/womens-work-is-undervalued.pdf; Sherer, J. & Poydock, M. (2023, February). *Flexible Work Without Exploitation*, Retrieved 20 April 2026, from Economic Policy Institute website: https://www.epi.org/publication/state-misclassification-of-workers/

[13] *Misclassifying workers as independent contractors*, *supra* note 11.

[14] See, e.g., Udochi Onwubiko, National Partnership for Women & Families, *They're Coming for Your Overtime Pay*, Issue Brief (July 2025), retrieved 21 April 2026, available at https://nationalpartnership.org/wp-content/uploads/theyre-coming-for-your-overtime-pay.pdf, at 2 & nn. 5, 6; Dembe, A.E., Erickson, J.B., Delbos, R.G., & Banks, S.M. The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States. Occup Environ Med. 2005 Sep;62(9):588-97. doi: 10.1136/oem.2004.016667.

[15] See, e.g., Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California, Research Brief, UCLA LOSH (July 2020), retrieved 21 April 2026, available at https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf; Greenwich, H. & Mendoza, D. Our Pain, Their Gain: The Hidden Costs of Profitability in Seattle Hospitals. Puget Sound Sage (April 2012). Retrieved 21 April 2026, from https://pugetsoundsage.org/wp-content/uploads/2014/10/Our-Pain-Their-Gain-The-Hidden-Costs-of-Profitability-in-Seattle-Hotels.pdf.

[16] Ibid.

misclassification costs workers critical job-protected leave for medical, caregiving and deployment-related needs under the FMLA, which incorporates the definitions of "employ" and "employee" from the FLSA.[17] Congress enacted the FMLA to address widespread sex discrimination by employers that was premised, in large part, on women's need to take time off to have children, to care for them, and to care for other family members.[18] Indeed, entrenched stereotypes that women are caregivers first, and workers second, and long sustained overt discrimination[19] continues to drive biased decision-making.[20] Reduced access to 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. 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 just in 2025.[21] Yet too many people—especially workers of color—already cannot access the leave protections of the FMLA because of its eligibility requirements, which exclude 44 percent of the workforce, or because they cannot afford to take unpaid leave under the statute.[22] By increasing the risk of misclassification, even more women are in danger of being unable to benefit from the FMLA's protections.

Likewise, the risk of increased misclassification threatens breastfeeding workers' economic security by stripping away the protections of the PUMP Act. Enacted in 2022, the PUMP Act amended the FLSA to extend lactation break time and private space protections to nearly all employees—a significant expansion of the law's prior coverage.[23] Because those protections are grounded in FLSA employee status, employers who misclassify workers as independent contractors also deny them the basic necessities of break time and a private, non-bathroom

[17] 29 U.S.C. § 2611(3).

[18] 29 U.S.C. § 2601; See, e.g., Nevada Dep't of Human Resources v. Hibbs, 538 U.S. 721, 728-30 (2003).

[19] See, e.g., Califano v. Westcott, 443 U.S. 76 (1979) (invalidating federal statute granting unemployment benefits to fathers but not mothers, on equal protection grounds); Weinberger v. Wiesenfeld, 420 U.S. 636 (1975) (federal law automatically granting Social Security survivor benefits to widows and children, but granting such benefits only to children where the surviving spouse is male, violated due process clause); Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) (school board policy requiring pregnant teachers to take unpaid maternity leave after first trimester and prohibiting their return to work until their infants were three months old violated due process clause); Frontiero v. Richardson, 411 U.S. 677 (1973) (federal law automatically deeming spouses of male servicemembers as dependents, but not spouses of female servicemembers, violated equal protection clause); Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971) (under Title VII, rejecting employer policy barring mothers of young children from applying to work on assembly line).

[20] Arena D.F., Jr., Volpone S.D., Jones K.P. Maternity bias in the workplace: A systematic review. J. Manag. 2022;49:52–84; Correll, S., Benard, S., & Paik, I. Getting a Job: Is There a Motherhood Penalty? Am. J. Soc. 2007;112(5):1297–1338; Budig MJ, England P. The wage penalty for motherhood. American Sociological Review. 2001;66:204–225.

[21] National Partnership for Women & Families. (2026, January). *Key Facts: The Family and Medical Leave Act*. Retrieved 15 April 2026, from https://nationalpartnership.org/report/fmla-key-facts/

[22] Ibid.

[23] 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.

space to express breast milk at work. Workers who need but lack access to lactation accommodations are often forced to leave the workforce altogether,[24] compounding the inequities that women—and particularly women of color—already face as a result of the gender pay gap.

Restricting access to PUMP 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,[25] and breastfeeding is associated with meaningful health benefits for both infants and mothers, including reduced rates of infection, chronic disease, and cancer.[26] The Department should not adopt a rule that will undermine clear public health goals by decreasing breastfeeding rates.

Separately and collectively, these outcomes directly conflict with the Department's mission of supporting workers and assuring access to work-related benefits and rights.

For these reasons, the undersigned organizations urge the Department to withdraw the proposed rule in its entirety. Instead, the Department should leave in place the 2024 worker-protective standard that aligns with longstanding interpretations of the FLSA, FMLA, and MSPA, reflects the full scope of the economic realities test as articulated by courts, and meaningfully addresses the persistent problem of worker misclassification—particularly in industries where women are overrepresented.

Thank you for the opportunity to comment on this important issue.

Sincerely,

National Partnership for Women & Families
ACLU Women's Rights Project
WorkLife Law

National Organizations:
A Better Balance
Autistic Self Advocacy Network (ASAN)
Care in Action
Center for Economic Policy & Research
Coalition on Human Needs
Equal Rights Advocates

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[24] Liz Morris, Jessica Lee & Joan C. Williams, *Exposed: Discrimination Against Breastfeeding Workers*, WorkLife Law, UC Law SF (2019), https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf.
[25] See 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 (2019), https://pubmed.ncbi.nlm.nih.gov/29928834/.
[26] Andrea C. Masi & Christopher J. Stewart, *Role of Breastfeeding in Disease Prevention*, 17 Microbial Biotechnology (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11214977/.

Every Mother, Inc.
Family Values @ Work
Healthy Horizons Breastfeeding Centers
Institute for Women's Policy Research
Legal Momentum, The Women's Legal Defense and Education Fund
MomsRising
National Domestic Workers Alliance
National Education Association
Oxfam America
Paid Leave for All
Public Advocacy for Kids (PAK)
Reproductive Freedom for All
RootsAction
Service Employees International Union
The Healthy Children Project
U.S. Breastfeeding Committee

California:
BreastfeedLA
California Immigrant Policy Center
California Work & Family Coalition
HEALTHEE SOUL
Long Beach Alliance for Clean Energy

Hawaii:
Maui Economic Opportunity, Inc.

Kansas:
Kansas Breastfeeding Coalition

Ohio:
Ohio Breastfeeding Alliance

Pennsylvania:
J Badger Consulting Inc
Women's Law Project

South Carolina:
Serving at-risk families everywhere, Inc.