



The Honorable Kevin Kiley
Chairman
Subcommittee on Workforce Protections
House Committee on Education and Workforce
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Alma Adams
Ranking Member
Subcommittee on Workforce Protections
House Committee on Education and Workforce
2176 Rayburn House Office Building
Washington, D.C. 20515

July 18, 2023

Dear Chairman Kiley and Ranking Member Adams,

Thank you for hosting the hearing titled "Cutting Corners at WHD: Examining the Cost to Workers, Small Businesses, and the Economy." We appreciate the opportunity to share our perspective on the impact of regulations on small businesses within the restaurant industry.

The restaurant industry is predominantly comprised of small businesses, with 9 in 10 restaurants having fewer than 50 employees and 7 in 10 being single-unit operations. These small business owners face unique challenges in an industry where operating margins are thin, and external factors such as inflation and supply chain constraints present ongoing struggles to remain solvent.

Excessively burdensome regulations can impose enormous costs on businesses and workers, hindering job creation and impeding economic growth. This impact is particularly pronounced for small businesses within the restaurant industry, as they often lack the resources to easily comply with regulatory requirements and adapt to changing compliance standards. It is crucial to balance regulatory oversight and the ability of small businesses to thrive and contribute to the economic well-being of their communities. For example, small businesses and restaurants are concerned with the Department of Labor's Wage and Hour Division (WHD) recent actions, including:

- The "dual jobs" 80/20 tip credit regulation;
- The proposed independent contractor rule, and;
- The soon-to-be-released proposal on overtime eligibility.

The U.S. Small Business Administration's Office of Advocacy has commented that WHD underestimated the compliance costs and administrative burdens associated with rules for small businesses, including those within the restaurant industry. Recently, the U.S. Court of Appeals for the Fifth Circuit noted that the addition of a 30 continuous-minute limitation to the prior 80/20 framework almost certainly creates minute-by-minute recordkeeping obligations and imposes significant costs ignored by the Department of Labor.

We are deeply concerned that WHD made assumptions that compliance costs associated with these rules would be minimal, despite evidence suggesting otherwise. The U.S. Small Business Administration's Office of Advocacy has raised valid concerns that the Department of Labor's certification lacked an adequate factual basis. Their comments emphasize the need for the Department to reassess the cost estimates and economic impact of these rules on small entities and explore significant regulatory alternatives.

With WHD poised to introduce a proposed rule amending the overtime standard, we urge the Department to conduct a comprehensive analysis that takes into account the unique challenges faced by small businesses within the restaurant industry. Small businesses in this industry often operate on slim profit margins and lack the financial capacity to absorb substantial increases in administrative costs. It is crucial that the Department assesses the economic consequences of the proposed rule and seeks input from small businesses to develop regulations that are both fair and feasible.

Furthermore, it is imperative to strengthen the Regulatory Flexibility Act (RFA) to ensure that federal agencies conduct thorough assessments of the economic impact on small entities and explore significant regulatory alternatives that minimize the burden on small businesses. The RFA, enacted over 40 years ago, was designed to protect small businesses from one-size-fits-all rulemaking. However, federal agencies have often failed to comply with the requirements of the RFA, neglecting to consider the effects of regulations on small businesses. We urge Congress to take action and update the RFA to address the increasing regulatory burden on small businesses and ensure their voices are heard in the rulemaking process.

We look forward to ongoing dialogue and the opportunity to work together to find solutions supporting the success and sustainability of the restaurant industry and its workforce.

Best,

A handwritten signature in black ink, appearing to be 'JH' with a long horizontal stroke extending to the right.

Jordan Heiliczer
Director of Labor and Workforce Policy