



House Committee on Education & the Workforce, Subcommittee on Workforce Protections: “Examining the Policies and Priorities of the Wage and Hour Division” - Engine’s Statement

February 29, 2024

Dear Chairman Kiley, Ranking Member Adams and members of the House Committee on Education and the Workforce’s Subcommittee on Workforce Protections,

Thank you for convening a hearing regarding Department of Labor (DOL) rulemaking that impacts small businesses and startups. Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship through economic research, policy analysis, and advocacy on local and national issues. Access to talent for startups is a core tenet of Engine’s work, and we are grateful for the opportunity to provide our feedback on how DOL regulations impact the talent pool in the innovation ecosystem.

Independent contractors are essential for sustaining innovation in the United States. Startup founders, especially, depend on the flexibility they offer as they factor in how and when to expand their teams. According to a study from the Mercatus Center, “[s]ome 57 percent of startups indicate that the use of contractor labor is an essential part of their business models,” and “79 percent of startups have at least one contractor.”¹ Though it is true that many startups face limited budgets particularly in their initial phases, startups indicate they rely on contract labor because the reality is that many tasks may not warrant full-time employment. One survey of startups found the top two reasons for hiring contract labor are because “startups needed individuals for one-off projects or they needed specialized talent they could not hire full time,” and, “startups needed flexibility, given the risk associated with early-stage development.”² Independent contractors assist startups in optimizing their limited resources and maximizing their impact.³

The DOL’s Independent Contractor rule will disrupt startups in recruiting necessary talent, compelling them to either employ full-time staff beyond their financial means or forgo hiring for crucial positions, thereby constraining their expansion.⁴ As we’ve previously emphasized, while established, larger corporations can absorb the costs of maintaining a larger, permanent workforce, many startups operating on

¹ Liya Palagashvili, *Exploring How Regulations Shape Technology Startups*, https://www.mercatus.org/system/files/palagashvili_-_mercatus_research_-_exploring_how_regulations_shape_technology_startups_-_v1.pdf.

² *Id.*

³ Engine, *Comments to the House Judiciary Committee* (Oct. 20, 2021), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/617bfd3b500f2546d60c1d1/1635516116358/House+Judiciary+Antitrust+comments+-+Oct+20%2C+2021.pdf>.

⁴ Engine, *Comments on Department of Labor, Wage and Hour Division, Notice of Proposed Rulemaking, “Independent Contractor Status under the Fair Labor Standards Act; Withdrawal”* (April 12, 2021), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/6074a4cfe7831f136f11a75f/1618257104437/EngineCommentsIndependentContractor.pdf>.

tight budgets face a different outlook. As Grant Leah, the co-founder of Woodland, California-based startup Nych, explained to Engine, “The reality is that startups are so small and so lean that we can’t really hire employees ...Founders are the ones who typically don’t take a salary. Without the ability to hire independent contractors to fill these voids, most startup ideas would never get off the ground.”⁵

Startups opting for a cautious approach when transitioning to full-time employment also face the challenge of competing with larger tech firms for talent. This competition can substantially inflate the cost of hiring full-time employees, making team expansion difficult for startups that wish to bring on full time labor but face talent shortages, which are particularly acute in high-tech sectors like AI.⁶ Furthermore, the potential ramifications for small businesses, whether they abstain from hiring due to financial constraints or apprehension regarding the proposed rule, remain uncertain, including potential impacts on startup growth. Additionally, there could be accompanying job losses for workers employed by small businesses.⁷

Policymakers should take action in support of the innovation ecosystem. Ensuring startups have the ability to make the best hiring choices to grow is paramount, especially as efforts to restrict the ability to classify workers as independent contractors in California “led to a reduction in self-employment and did not vastly increase the hiring of W-2 employees.”⁸ For regulations that limit the ability to hire independent contractors, policymakers should ensure these frameworks work for small, developing startups, and not subject them to the same requirements faced by large, established businesses. The U.S. remains the global leader in innovation, but this will only continue to be so if startups are able to focus on innovating, instead of navigating overly burdensome regulations that don’t suit the startup ecosystem and limit flexibility for small business employers and employees alike.

Thank you once again for your commitment to examining the barriers faced by current startup owners and exploring how Congress can better support them. Engine is happy to serve as a resource for the committee as you continue this critical work.

Sincerely,
Engine Advocacy
700 Pennsylvania Ave SE
Washington, D.C., 20003

⁵ Edward Graham, *#Startups Everywhere: Woodland, California* (May 8, 2020), <https://www.engine.is/news/woodland-calif>.

⁶ Technet, *Closing the Skills Gap*, <https://technetorg.app.box.com/s/4ein0h9wq9dkxxlhltxd6aoqcw9r4m5z>.

⁷ Liya Palagashvili, *Liya Palagashvili on California’s AB5*, International Center for Law & Economics (Feb 3, 2024), <https://laweconcenter.org/liya-palagashvili-on-californias-ab5/>.

⁸ Engine, *Startup News Digest* (Jan. 19, 2024), <https://www.engine.is/news/startup-news-digest-011924>.