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House Education and Workforce Committee
Subcommittee on Workforce Protections

"The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges,
and Opportunities"
March 26, 2025

Good morning, Chairman Mackenzie, Ranking Member Omar, and other members of the subcommittee. Thank you for the opportunity to speak to the subcommittee again today about ways to strengthen bedrock protections for American workers at a moment of rising economic uncertainty. I am the Director of Economy and Jobs at the Century Foundation; an independent nonpartisan think tank with offices in Washington and New York City.

The DOGE Cloud Over the Department of Labor Threatens the Fair Labor Standards Act and Other Worker Protections

A 13-year-old working the night shift cleaning the kill floor of a meatpacking plant; working people putting in a 50-hour work week and getting paid for just a fraction of those hours; mothers forced to choose between their children and their source of income because they're denied a place to pump breast milk at work – these are some of the nightmare workplace scenarios that Americans depend on the U.S. Department of Labor (DOL) to prevent. Those protections are at risk if Elon Musk's so-called Department of Government Efficiency gets its way and strips the U.S. Department of Labor of its talent and capacity. The truth is that 15,000 plus DOL employees, who like I did in 2022, raised their hand to swear an oath to the constitution to uphold the laws Congress enacted to protect workers. They toil in every corner of the country to ensure that workers come home safe and alive at the end of their shift with the pay they've earned. But that's not all. DOL employees also protect retirement benefits, support training such as registered apprenticeships, deliver unemployment benefits when workers lose a job, provide workers' compensation to workers hurt during federal service, and more. The mission of every part of DOL is to ensure the labor protections passed by Congress are executed fully and fairly. The commitments to workers and employers in the Fair Labor Standards Act being discussed today will be rendered meaningless without a strong DOL.

A Strong Economy and Worker Power Are at Risk

The precarious condition of the economy makes today's hearing especially timely. Earlier this month, we marked the fifth anniversary of the COVID pandemic—remembering both the tremendous loss of life and the economic calamity that followed. When he took office for a second term in January, President Trump inherited an economy that had not only recovered all jobs lost during the pandemic, but had added a record-high 16 million jobs during the Biden Administration and achieved the longest stretch of unemployment below 4% in more than 50 years. Federal economic recovery legislation powered steady and stable growth that far exceeded the trajectory of peer nations. The Biden Administration's investments through the bipartisan infrastructure law, CHIPS and Science Act, and Inflation Reduction Act catalyzed more than [\\$1 trillion in private-sector investment](#)¹ and created good-paying jobs in manufacturing and clean energy. That includes adding 600,000 manufacturing jobs after factories lost 200,000 jobs under President Trump's first term.

With good-paying job opportunities plentiful, workers finally had leverage in the economy to see wage gains that outpaced inflation, with [real inflation-adjusted take-home pay in 2024 is 5 percent higher](#)² than it was pre-pandemic (2019). Backed by the strong economy and the most pro-labor Administration in history, unions representing workers at major corporations secured significant wage increases such as a [25 percent wage increase for United Autoworkers \(UAW\) workers at General Motors \(GM\)](#)³, Ford, and Stellantis; a 60%-plus increase for longshoremen on the east and Gulf coasts; and historic increases for healthcare workers, UPS delivery drivers, flight attendants, delivery drivers, and machinists. These gains happened with the support of a strong Department of Labor that supported workers' rights to organize and bargain collectively.

While this strong recovery has increased workers' power, America's workers deserve a raise from an economy that is still rigged against them. The richest 1 percent of the country—people like Elon Musk—have captured an outsized share of national wealth, leaving workers behind. The average CEO earned [290 times more than their average workers in 2023](#),⁴ up from 21 times in 1965. Workers and communities, especially rural communities have been left behind - as rural counties have a shrinking share of national wealth (9% of GDP in 2003 to 7.8% in 2023).⁵ While [70 percent of Americans support unions](#)⁶, the erosion of labor laws means only [9.9 percent of all workers—and less than 6 percent of private-sector workers—experience the union advantage in wages and benefits](#)⁷ that built the middle class. [Women are paid only 83 cents](#) for every dollar paid to men.⁸ In fact, today is Equal Pay Day - a day that symbolizes how far into the year women must work to be paid what men made the previous year alone. In addition, the [Black unemployment rate](#)⁹ (6.0 percent in February 2025, down from 9.9 percent four years ago in January 2021) still far exceeds the White unemployment rate (3.8 percent). These challenges underscore the need to bolster the critical protections provided by FLSA, such as minimum wage and overtime protections, while strengthening labor law with reforms encompassed by the Protecting the Right to Organize (PRO) Act. These policies are our most potent tools to lift American workers' economic fortunes.

The Trump Administration's actions are threatening economic progress and reducing worker power. This Administration has waged an all-out war against federal civil servants,

including mass firings and radical cuts to critical agencies like the Department of Education and Consumer Finance Protection Bureau. Eighty percent of federal workers live outside the Washington area, and these actions threaten to put hundreds of thousands of middle and working class Americans out of work in states like Georgia, North Carolina and Pennsylvania, each of which [have more than 75,000 federal workers](#).¹⁰ And Musk's war on workers diminishes the ability of federal agencies to provide services and protections Americans rely on every day—from sending their child to a safe school to living free of consumer scams.

This Administration's on-again and off-again announcements of large-scale tariff increases—including against U.S. allies like Canada—have spooked companies and caused stock market swings, leading to a spike in announced private and public sector layoffs and a sharply increased risk of inflation. While strategic deployment of tariffs, trade enforcement, and fair trade agreements can bolster economic competitiveness and national security, this Administration's use of tariffs has been reckless and rash. Moreover, President Trump used his address to Congress to threaten to repeal the [CHIPS Act](#)¹¹ which is powering the manufacturing recovery he claims he wants to bolster.

The Administration's policies have caused consumer confidence to decline and inflation expectations to rise. While we have not yet seen large consequences of the Administration's policies in the job market data because of data lags, independent forecasts show slowing growth and rising recession risk, and the Administration's looming April 2nd deadline for global tariffs, or another big event, could tip the economy over into recession. A recession would inflict both immediate pain and lasting scars on working families who lose jobs, and undermine the worker power that contributed to strong wage growth at working- and middle-class Americans coming out of the COVID pandemic.

Bedrock Workplace Protections Help Ensure American Prosperity in Changing Times

In the midst of economic uncertainty and endemic inequality, workers count on the bedrock protections of the Fair Labor Standards Act (FLSA) now more than ever. FLSA's critical standards serve as a floor for fair treatment of workers in our economy, especially those without a union, and establishes paths to the middle class. Yet, the floorboards created by FLSA have been loosened by underinvestment and neglect in recent decades. The federal minimum wage of \$7.25 has not been increased since July 2009, with low-paid workers losing nearly half of their purchasing power as a consequence of Congress's failures to raise the minimum wage. As a result, in those states that require only the federal minimum wage of \$7.25, [workers](#) are 46% more likely to make below \$15 an hour¹²—meaning a full-time worker earns too little to lift themselves, much less their family, out of poverty. Yet, employers consistently skirt even paying these low minimum rates. Employers violating FLSA laws commit up to [\\$50 billion](#)¹³ in wage theft from workers each year, including \$15 billion from minimum wage violations alone. Despite its hard work to combat FLSA violations, the Wage and Hour Division of the U.S. Department of Labor is substantially under resourced—with roughly [1 investigator for every 250,000 workers](#)¹⁴.

Seismic changes in American workplaces require increased vigilance and reforms to strengthen the power of FLSA. [As I told this subcommittee in 2017¹⁵](#), the twentieth-century economy was dominated by large firms who used a traditional employment relationship at every step of production. The twenty-first-century management model frequently entails the firm retaining only the most central aspect of its identity, and outsourcing all other functions in the production process. Whereas a janitor at a bank in the 1960s could enjoy the benefits of the bank's pension plan, the new model contracts out these services to a contractor who might offer cleaning "franchises" with no wage protections or benefits. These changes have spurred an epidemic of misclassification of workers as independent contractors, stripping workers of their minimum wage and overtime protections, as well as denying them access to unemployment insurance and other critical programs. Recent research by [my colleague Laura Valle-Gutierrez¹⁶](#) has found that up 2.1 million (19 percent) of construction workers are misclassified as independent contractors, and the U.S. Census Bureau estimates that 6.7 percent of all workers are misclassified. The misclassification epidemic has particularly harmed lower-paid workers like home health aides and nail salon workers, who can least afford to have their rights and protections stripped through these schemes. Even when workers are paid on the books, the rise in subcontracting, use of third-party administrators, franchising, and staffing firms have made workers increasingly vulnerable to wage violations. The genius of the FLSA is that it holds employers accountable for fair treatment of their workers when the employer has the power to control the work, regardless of changing structures in the economy.

Reforming the Fair Labor Standards Act to Meet the Challenges of the Modern Economy

I appreciate the committee's interest in modernizing the FLSA when possible. The first place to start is giving America's workers a raise, by enacting a badly overdue increase in the minimum wage. Phased in over time to help employers adjust, an increase in the wage floor should be set high enough to sustain families at the minimum wage. This would help ensure the lowest-paid workers in our economy—who are disproportionately women and workers of color—are not living in poverty despite working full time jobs. It would also give a pay boost to other wage earners making above the wage floor, helping cut into endemic economic inequality in America. A key historical benchmark is the level that [held throughout the 1960s¹⁷](#), when the minimum wage was half of the average wage in the economy. (Today, the average non-supervisory worker earns \$31 per hour, and the current minimum wage of \$7.25 is less than a quarter of that amount.) That's the thrust of the [Raise the Wage Act of 2023¹⁸](#), which would gradually raise the federal minimum wage to \$17 an hour by 2028, benefitting [an estimated 28 million workers¹⁹](#) who earn less than \$17 an hour and or just above that amount. Critically, the Raise the Wage Act would index the minimum wage to the median hourly wage after it reaches \$17 per hour, so workers won't ever see such a long gap between increases.

The next way to modernize the FLSA is by ensuring that all Americans are protected by the same federal minimum standards floor. This includes setting one fair wage for tipped workers by eliminating the so-called tip credit, which allows tip workers to be paid as little as \$2.13 per hour—a floor which has not been raised since 1991. Not only does this system leave tipped workers more exposed to poverty, it places a greater administrative burden on workers and employers to ensure that each worker earns the equivalent of the federal minimum wage

when tips and wages are combined. It's also time to end discriminatory provisions allowing for a subminimum wage for workers with disabilities permitted under Section 14(c) of the FLSA, which enables employers in so-called sheltered workshops to pay workers with disabilities as low as \$0.25 per hour. As people with disabilities have chosen to live and work independently in communities, the number of employers with certificates enabling them to pay subminimum wages under 14(c) has declined precipitously from 5,600 in 2001 to 801 in 2024. It's past time to end this practice—and the Department of Labor's proposed rule-making to [cease issuance of 14\(c\) certificates](#)²⁰ should go forward. In tandem with the phase-out of 14(c) Congress should expand support for the programs that help intellectually and developmentally disabled individuals find jobs in non-segregated environments, such as through the [Transition to Competitive Integrated Employment Act](#)²¹ of 2023.

Enforcing Wage and Hour Laws to Stop Wage Theft and Protect Children

The next area of reform is to strengthen the enforcement powers of the U.S. Department of Labor, and its Wage and Hour Division (WHD). Through consistent and targeted enforcement, the Department of Labor recovered [\\$1 billion in underpaid wages and damages for American workers during the Biden Administration](#)²², and responded to nearly 1 million calls for assistance in FY2023. Congress should increase the budget for WHD so it has additional resources to keep up with violations in an expanding economy, and provide effective compliance assistance to employers, such as the Department's FY25 request of an additional [187 full-time equivalent employees for WHD](#),²³ including 50 specifically for child labor. At the same time, Congress should increase civil monetary penalties so they are a meaningful deterrent for violating the law in the first place.

Preventing child labor must continue to be a top priority for increased enforcement. FLSA's child labor provisions were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or educational opportunities. Child labor investigations were a top priority of the Biden Administration. For example, on [January 15th](#),²⁴ DOL secured a \$4 million settlement for children employed at Perdue poultry plants in dangerous jobs in poultry plants deboning and processing chicken, using dangerous equipment, and at night. DOL and Perdue also came to an agreement that will prevent such exploitation in the future. The Protecting Children Act, introduced in the last Congress, is an example of the kind of modernized enforcement powers needed to stem child labor, including increased civil and criminal penalties for child labor violations, stronger ability for WHD to stop the movement of goods produced in violation of child labor laws alongside public information, research, and data driven enforcement.

Independent Contractors and Joint Employer - Stay the Course

Over the last fifteen years, employers and workers have had whiplash from changing regulations and administrative interpretations of independent contractors and joint employment. Congress and the Trump Administration should follow the lead of the Biden Administration in

following law and precedent that can apply consistent parameters to constantly evolving business practices. The Department of Labor's independent contractor final rule, [implemented on January 10, 2024](#),²⁵ returned determinations of whether an individual is an employee for the purposes of the FLSA to the courts-established six factor test to analyze whether a worker is, "as matter of economic reality, economically dependent on an employer for work."¹ The 2024 action rightly [rescinded 2021 rule](#)²⁶ that disregarded US Supreme Court and Circuit Court authority and the statutory definitions by overly relying on just two factors, and failed to consider whether the work performed is central or important to the potential employer's business. The purpose of the 2024 rule is to allow employers and WHD to distinguish between those individuals who are genuinely in business for themselves (independent contractors) and everyone else, who are employees and should be paid the minimum wage and overtime. The 2024 rule should make it clear to employers like restaurants that [WHD found in Minnesota](#)²⁷ misclassified dishwashers as independent contractors and home health agencies that [misclassified home health care workers in Montgomery, AL](#)²⁸ that they should abort schemes to bilk low-wage workers through misclassification.

The FLSA is compatible with innovation in the economy. As I told this committee in [2017](#), "Nothing in the FLSA prevents any of the common examples of flexible work (working from home, working split shifts, doing piece work, or other forms of intermittent work) as long as these arrangements ensure that the worker is paid for their work, at least at the minimum wage, and with overtime pay for any hours over forty hours per week." This means that the FLSA already contemplates that modern technology, including smartphone apps, can be deployed for this kind of hours worked tracking just as they are for all kinds of work in the gig economy.

Similar to addressing the misclassification of employees as independent contractors, the Biden Administration's actions in 2021 [rightly returned standards for joint employment responsibility](#)²⁹ under the FLSA to long-established court precedent and the statute's broad definitions of covered employers. Since the 1930s, the FLSA has recognized that individuals can have more than one employer accountable for ensuring compliance with the law. Contrary to the Trump Administration's [2020 Joint Employer Rule](#)³⁰, courts have consistently found that joint employment responsibility extends not just to those that pay workers but to other entities who jointly control the worker's schedule, conditions and method of payment. This includes [decisions](#)³¹ that have held public agencies accountable under the FLSA for the work on home health aides contracted by government agencies, garment factory workers hired by a subcontractor for specific tasks integrated into production, and nurses hired into hospitals by a staffing agency. The principle of joint employment is clear. Powerful entities who economically benefit and control the work should not benefit from exploitation of workers deprived of the basic protections provided by the FLSA.

DOGE Cuts to the Department of Labor Will Undermine Core Labor Standards

¹ The six factors are (1) opportunity for profit or loss depending on managerial skill; (2) investments by the worker and the potential employer; (3) degree of permanence of the work relationship; (4) nature and degree of control; (5) extent to which the work performed is an integral part of the potential employer's business; and (6) skill and initiative

None of these reforms to the FLSA, or other labor and employment laws, will meet their potential without a strong U.S. Department of Labor. Actions taken by DOGE have already weakened the U.S. Department of Labor and it's likely to get worse. For example, the [DOGE website lists](#)³² scores of leases of government offices far beyond the beltway that are being canceled, including at the Wage and Hour Division. The work of the Wage and Hour Division is done in the field, where investigators visit worksites and DOL staff at local offices answer thousands of phone calls taking complaints about wage violations and providing compliance assistance to employers. Local wage and hour offices are familiar with their local economy, understanding the nature of the industries and becoming part of the community. Forcing wage and hour inspectors to travel hundreds of miles to complete an investigation is the opposite of efficiency. Beyond WHD, DOGE has canceled leases for over 30 offices of the Mine Health and Safety Administration, including 7 in Eastern Kentucky mine country alone. As Norma Simons-Holbrook [told CBS 13 News](#)³³, that “we need the inspectors,” to protect multiple family members who love their work as coal miners.

The risk of DOGE and the Trump Administration to the U.S. DOL and to American workers is growing. A federal judge ordered DOL to reinstate [170 probationary employees fired](#) as part of a wave of Valentine's day mass terminations across the federal government. This is likely only a temporary reprieve, as all federal agencies were required to provide information to OMB by March 13th with plans for additional reduction. If further cuts go through, parts of DOL like the Employee Benefits Security Administration (EBSA) may no longer be able to protect workers like Erika, a young mother in Georgia, whose insurance company stood ready to deny her a life-saving liver transplant before DOL got involved and ensure the surgery was covered.

Across DOL, additional damage has already been done. The Office of Federal Contract Compliance Programs (OFCCP) has authority to investigate federal contractors, winning \$260.8 million dollars in monetary relief for employees who were discriminated against because of their race, gender, sexual orientation, disability, or status as a protected veteran. Following President Trump's decision to revoke Executive Order 11246, which has been a hallmark of federal contracting since 1965, DOL moved to largely dismantle [OFCCP](#),³⁴ including plans to reduce its staff by 90 percent and its office from 55 offices to five.

Further cuts to DOL will jeopardize its ability to promote the development of family sustaining jobs and help employers recruit qualified workers. President Trump has already revoked the [Good Jobs Executive Order](#)³⁵ designed to make sure federal investments create good-paying, high-quality jobs for American workers, by protecting workers' right to organize, using prevailing wage standards and supporting registered apprenticeships. What will happen if cuts reach the Office of Disability Employment Policy and its [Job Accommodation Network](#) ³⁶, which responded to 40,000 inquiries, including helping a veteran with head and neck injuries worked with his employer to continue his job in graphic design with the use of low-cost accommodations like an ergonomic mouse and noise-canceling headset? Or the Women's Bureau and its [Women in Apprenticeship and Nontraditional Occupations](#)³⁷ grants, which have opened the door to good-paying construction jobs for women all across the country? These

policies don't discriminate against any group, rather they make sure employers take advantage of talent in every corner of America and that no one is discriminated against in the workplace.

Conclusion

Decades of concentration of power in the U.S. economy has undermined the power of American workers. The strong economy and the labor policies of the Biden Administration started to reverse these trends. But today's economic and policy outlook puts workers at grave risk. The Trump Administration's DOGE-driven cuts to the Department of Labor threaten to undermine the first line of protection for American workers in communities and workplaces across the nation. For nearly one hundred years, the Fair Labor Standards Act has ensured that employees—regardless of economic changes—would be treated fairly, guaranteeing them fundamental protections such as a minimum wage and overtime. Now is the time for Congress to strengthen these foundational for all protections to all workers, and ensure that the Department of Labor has the tools, talent and resources to enforce the law.

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