

Economic Policy Institute

June 22, 2026

Daniel Navarrete
Director of the Division of Regulations, Legislation, and Implementation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Proposed Rule: Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act ([RIN 1235-AA48](#))

Dear Mr. Navarrete,

We write to submit this comment on behalf of the Economic Policy Institute (EPI), responding to the Department of Labor's proposed rule on Joint Employer Status Under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA). EPI is a nonprofit, nonpartisan think tank created in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers, and assesses policies with respect to how well they further those goals.

EPI strongly opposes the Department of Labor's (DOL's) proposed rulemaking and urge the agency to withdraw this rule. If implemented, we conservatively estimate this rule would cost workers roughly \$1 billion annually through increases in workplace fissuring and exposure to wage theft. Further, the FLSA's joint employer definition is also used to apply protections under FMLA, MSPA, the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act (now part of the FLSA), and the Equal Pay Act. Under the proposed rule, workers thus would not only be at risk of losing full protections to their right to earn the minimum wage over overtime pay, but *also* their right to unpaid but job-protected family and medical leave, pay discrimination protections, and the right to pump breastmilk while at work. Agricultural workers, already operating in notoriously underpaid and hazardous conditions, will also find it harder to enforce or get compensation for violations of their rights to the basic pay and housing requirements for agricultural workers under MSPA. Because of the broad impacts of structural racism and sexism on labor market outcomes, women and people of color are overrepresented in low-wage jobs overall, which are particularly vulnerable to fissuring and wage theft. As a result, women workers and workers of color are likely to be disproportionately harmed if this rule is finalized.

The proposed rule would undermine the original intent of the FLSA.

At its most basic, the joint employer standard simply requires that when multiple employers co-determine or share control over a workers' terms of employment (such as pay, schedules, and job duties), each of

those employers is responsible for compliance with worker protection laws. Given the realities of the modern workplace, in which employees often find themselves subject to more than one employer, workers deserve a joint employment standard under the FLSA that guarantees these basic rights and protections.

As the American Civil Liberties Union (ACLU) has argued in their joint comments, also cosigned by EPI, the NPRM contravenes the statutory definition of “employ” under the FLSA, Supreme Court precedent. This rule also shares the same substantive defects as DOL’s 2020 Final Rule, which was largely invalidated by a federal district court in *New York v. Scalia*, 490 F. Supp. 3d 748 (S.D.N.Y. 2020).

EPI has conducted extensive research and policy analysis on the harms to workers from weakened labor standards and weakened enforcement of those standards. There is no question that this proposed rule would weaken labor standards. As with the first Trump administration’s attempt at weakening these regulations, this rule would dramatically narrow the set of circumstances whereby a firm can be found to be a joint employer under the FLSA. The FLSA is our nation’s fundamental worker protection statute, providing wage and hour protections to the vast majority of U.S. workers. The FLSA was drafted broadly, and its definition of an employer was intended to cover most workplaces and most workers. The intention was and should remain that companies that use staffing agencies, temporary workers, or subcontractors in their business operations are held accountable for complying with the FLSA’s basic provisions, including minimum wage, overtime, and child labor protections. The proposed rule will make it nearly impossible for many workers in those types of workplaces to enforce these rights. It would also take away the ability of workers to recover unpaid wages from firms who use undercapitalized contractors in their work.

We believe it is also important to acknowledge some of the most frequently referenced critiques of a broad, protective joint employer standard, from those who would like to see that standard weakened. One argument, already present in some of the comments that the Department has received on this rule, is that this weakened standard is necessary to provide regulatory clarity for franchisee employers in particular. The International Franchise Association, for example, says this proposed rule “protects the independence of franchise small businesses.”¹ However, these arguments obscure the fact that it is already large corporate franchisors who stand to benefit the most from having this “independence” protected.

Franchisee operators already bear the full responsibility for violations of the FLSA that occur on their watch, even if those violations may have been more likely to occur because of requirements or pressure exerted on them in their business agreements with the large corporate franchisors. Nothing in the FLSA’s current joint employer standard automatically labels a franchisor-franchisee relationship as a joint employment scenario. On the contrary, the longstanding joint employer standard is not one-size-fits-all, and always requires looking at multiple factors to determine how much control each entity is actually exerting on a worker. We urge the Department not to adopt a proposed rule that would continue to allow large employers to conceal their real interest—minimizing their own liability for FLSA violations—as a goal that is aligned with the best interests of small business owners and franchise operators.

¹ International Franchise Association (IFA). 2026. “[IFA Praises Trump Administration Joint Employer Rule](#)” (press release). April 22, 2016.

The Department’s flawed economic analysis overlooks that workers will lose pay if this rule is implemented.

DOL continues its misguided evaluation of the likely impacts of the proposed joint employer standard in its economic impact analysis. DOL has a responsibility to consider all relevant data in advancing this regulatory standard, but it fails to do so. The NPRM states that “the Department does not expect that there would be significant transfer effects as a consequence of the proposed rule,” explaining that “nothing in the proposed rule would reduce the wages owed to employees *under the FLSA or MSPA* [emphasis added].”²

However, even if the proposed rule would not change the wages *due* to a worker under the FLSA or MSPA, this does not mean that the proposal will not result in transfers between employers and employees. It would, in at least two ways.

First, this rule would incentivize workplace “fissuring,” i.e., employers increasing their reliance on contractors, subcontractors, temporary help agencies, and franchises rather than hiring employees directly—a practice that suppresses workers’ wages. The Department dismisses the idea that the rule would incentivize fissuring by essentially simply asserting that such concerns are “largely inapplicable” to this rulemaking.³ We, however, conservatively estimate that in the long run, the increase in workplace fissuring as a result of the rule would result in a transfer of at least \$772.0 million from workers to employers annually. This calculation is discussed in depth below.

Second, this rule would increase losses due to wage theft by employers. The Department acknowledges that this is an issue when it states that “some workers in vertically-tiered industries may, in some cases, have more or less difficulty collecting their owed wages,”⁴ but, astonishingly, dismisses this concern by stating, without evidence, that “the magnitude of this effect is unlikely to be significant.”⁵ We conservatively estimate that an increase in losses due to wage theft as a result of the rule will result in a transfer of at least \$225.6 million from workers to employers annually. This calculation is discussed in depth below.

Putting together these two estimates—more than \$772.0 million lost by workers as a result of the rule due to an increase in workplace fissuring and more than \$225.6 million in losses by workers as a result of wage theft—we estimate workers will lose roughly one billion dollars (\$997.6 million) annually as a result of this rule if it is finalized.

Quantifying the transfers from workers to employers due to an increase in fissuring

According to data from the Bureau of Labor Statistics’ 2023 Contingent Worker Supplement (CWS), there are 862,000 workers who work for contract firms and 945,000 workers who work for temporary help agencies.⁶ However, the CWS undercounts these workers. This is due in part to the fact that workers

² 91 Fed. Reg. 21909

³ 91 Fed. Reg. 21909

⁴ 91 Fed. Reg. 21909

⁵ 91 Fed. Reg. 21910

⁶ Bureau of Labor Statistics, “[Table 5. Employed workers with alternative and traditional work arrangements on sole or main job by selected demographic characteristics, July 2023.](#)” *Contingent and Alternative Employment Arrangements*, November 2024.

self-report what kind of firm they work for and may erroneously report that they work for the company where they are *doing* their work instead of for the contract firm or temporary help agency that placed them at that site. Establishment surveys—where the firm, not the worker, does the reporting—get around this problem. High-quality establishment data on employment in contract firms do not exist to our knowledge, but there are excellent establishment data on employment in temporary help agencies from the Bureau of Labor Statistics’ Current Establishment Survey (CES). These data show that there were 2.50 million workers in temporary help agencies in 2025,⁷ well over double (2.64 times) what is reported in the latest CWS. Adjusting the number of contract workers by the same multiple (2.64) results in an adjusted estimate of the number of contract workers of $862,000 * 2.64 = 2.28$ million.

It is important to note that we believe this estimate still undercounts contract workers, because the CWS includes only one very specific type of contract worker in its count of workers employed by contract firms—workers who are usually assigned to only one client and usually work at the client’s worksite. That excludes the many contract workers who work for multiple clients (e.g., janitorial workers or IT consultants) or offsite (e.g., call center workers or industrial laundry workers). We do not attempt to quantify this undercount.

Another important form of fissuring in the workplace is the increasing reliance on franchising models. Data from the U.S. Census Bureau’s 2017 Economic Census Franchise Statistics Report show that franchise employment in 2017 in key sectors where franchising is common was 9.59 million.⁸ Since 2017 is the latest year these data are available, we inflate the value by the growth rate in overall payroll employment between 2017 and 2025, 8.1%, from the Current Employment Statistics establishment survey of the Bureau of Labor Statistics.⁹ This results in an estimated level of franchise employment for 2025 of 10.36 million.

Putting this all together, we conservatively estimate that in 2025, there were a total of 15.14 million employees working in “fissured establishments”—working for temporary help agencies (2.50 million), working for contract firms (2.28 million), or working for franchises (10.36 million). It is important to note the degree to which this estimate of the fissured workplace is likely an undercount. David Weil estimated that in 2017, 18.9 percent of private-sector production and nonsupervisory workers—20.8 million workers in 2025—were in highly fissured industries, and that if additional fissured workers in occupations and in industries with mixed use of practices were included, that share could easily double.¹⁰

Because the rule would mean that employers would be able to avoid liability for FLSA violations for many workers in fissured establishments while still substantially controlling the wages and working conditions of those workers, companies will be incentivized to restructure and outsource parts of their business. Research shows that the wage losses associated with this kind of domestic outsourcing are substantial, on the order of 5% long-run earnings losses.¹¹ Thus the rule will result in a substantial transfer away from workers whose firms decide, as a result of the rule, to outsource the work that they do.

⁷ U.S. Bureau of Labor Statistics, All Employees, Temporary Help Services [TEMPHELPS], retrieved from FRED, Federal Reserve Bank of St. Louis. Accessed June 2026 at <https://fred.stlouisfed.org/series/TEMPHELPS>.

⁸ U.S. Census Bureau, “[Franchising in America: Key Data from the 2017 Economic Census](#),” September 2021.

⁹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis. Accessed June 2026 at <https://fred.stlouisfed.org/series/PAYEMS>.

¹⁰ David Weil, “Understanding the Present and Future of Work in the Fissured Workplace Context,” Working Paper, Brandeis University, May 2019.

¹¹ Dorn, D., Schmieder, J. F., Spletzer, J. R. (2018). *Domestic Outsourcing in the United States*. Chief Evaluation Office, U.S. Department of Labor; Deborah Goldschmidt and Johannes F. Schmieder, “[The Rise of Domestic Outsourcing and the Evolution of the German Wage Structure](#),” *Quarterly Journal of Economics* 132, no. 3 (August

CES data show that the average weekly earnings of production and nonsupervisory workers in temporary help services in 2025 was \$932.¹² A 5% penalty (noted above) for working in a fissured workplace implies that these workers would be earning \$981 if they were directly hired, a difference of \$49 per week. Combined with our estimate of 15.14 million employees working for fissured establishments, we find that every percent increase in fissuring as a result of the rule would, in the long run, lead to a wage loss of \$386.0 million annually.¹³ That means that an increase in domestic outsourcing of *just 2 percent* as a result of the rule—an implausibly conservative increase considering employers would newly be able to avoid liability for FLSA violations while still substantially controlling the wages and working conditions of domestically outsourced workers—would lead to a transfer of \$772.0 million annually from workers to employers. Further, it is important to note that using the broader estimate, described above, of 20.8 million private-sector production and nonsupervisory workers in the fissured workplace, that number would be \$1.1 billion.

Quantifying the transfers from workers to employers due to an increase in wage theft

Wage theft—the practice of employers failing to pay workers the full wages to which they are legally entitled—is a widespread and deeply rooted problem that directly harms millions of U.S. workers each year. Employers refusing to pay promised wages, paying less than legally mandated minimums, failing to pay for all hours worked, or not paying overtime premiums deprives working people of billions of dollars annually. It also leaves hundreds of thousands of affected workers and their families in poverty.¹⁴ Wage theft does not just harm the workers and families who directly suffer exploitation; it also weakens the bargaining power of workers more broadly and puts downward pressure on hourly wages in affected industries and occupations. For many low-income families who suffer wage theft, the resulting loss of income forces them to rely more heavily on public assistance programs, unduly straining safety net programs and hamstringing efforts to reduce poverty.

In 2008, Bernhardt et al. surveyed front-line workers in low-wage industries in the cities of Chicago, Los Angeles, and New York and found that two-thirds (68 percent) of these workers experienced at least one pay-related violation in any given week.¹⁵ The researchers estimated that the average cost to these workers over a year was \$2,634 out of a total earnings of \$17,616—15.0 percent of their wages. This adds up to a total of nearly \$3 billion annually stolen across all forms of wage theft among these workers in 2008. Generalizing these three-city, 2008 results to the nationwide 2025 workforce, we estimate that low-wage workers in the U.S. lost \$52.5 billion to all forms of wage theft in 2025.¹⁶

2017): 1165–1217; Arindrajit Dube and Ethan Kaplan, “[Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards](#),” *ILR Review* 63, no. 2 (January 2010): 287–306.

¹² Bureau of Labor Statistics, Current Employment Statistics (BLS-CES). Table B-8, Average hourly and weekly earnings of production and nonsupervisory employees on private nonfarm payrolls by industry sector, seasonally adjusted. Various years. Accessed June 2026 at <https://www.bls.gov/webapps/legacy/cesbtab8.htm>.

¹³ \$386.0 million = 15.14 million * \$49 * 52 weeks in a year * 1%.

¹⁴ Margaret Poydock and Jiayi (Sonia) Zhang, *More than \$1.5 billion in stolen wages recovered for workers between 2021 and 2023*, Economic Policy Institute, December 2024; David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers’ Paychecks Each Year: Survey Data Show Millions of Workers Are Paid Less Than the Minimum Wage, at Significant Cost to Taxpayers and State Economies*, Economic Policy Institute, May 2017.

¹⁵ Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities, 2009*, Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009.

¹⁶ Generalizing the three-city, 2008 results to the nationwide 2025 workforce required several adjustments. The low-wage workforce in the Bernhardt et al. study represented 15.1% of all workers in those cities, and 68% of those workers experienced at least one pay-related violation in the prior week. This implies that at least 15.1%*68% =

It is worth noting that though the Bernhardt et al. study is somewhat dated, more recent studies show that labor violations remain so prevalent that it is likely that simply extrapolating from the Bernhardt et al. study, as we have, will generate conservative numbers. For example, a 2024 study out of the Shift Project at Harvard Kennedy School found that nearly all (91%) hourly service sector workers in California experienced at least one labor violation in the prior year.¹⁷

The proposed rule would increase losses due to wage theft by employers in at least three ways. Each of these impacts will be particularly acute in industries in which there is high reliance on subcontracting, temporary work, and other alternative work arrangements, where there is already a disproportionate occurrence of wage theft.¹⁸

First, the proposal would severely limit the ability of millions of workers to get justice when they are victims of wage theft. By limiting workers' ability to recover wages from firms that contractually have the right to act with respect to the terms and conditions of employment, DOL is depriving workers of long-held rights to recover unpaid wages from their employers.

Second, there will be a reduction in wage theft deterrence caused by the reduction, as a result of the rule, of workers' ability to recover wages. This reduction in wage theft deterrence will likely lead to an increase in wage theft.

Third, by allowing firms that hire contractors to avoid legal liability for wages, the rule would give these firms greater incentive to award contracts to undercapitalized firms that are more likely to have low bids on the basis of not paying their workers what they are owed. And, absent the legal liability stemming from being a joint employer, if the contractor goes out of business, the lead business is not liable for the lost wages of the workers. In other words, this rule would increase the incentive for firms to seek out undercapitalized contractors who will provide lower bids to the companies that use them—bids that are able to be so low *because* the contractors plan to steal from their workers (by underpaying them or not paying them at all).¹⁹

10.3% of all workers experienced wage theft in a given week. Data from the BLS Current Employment Statistics (CES) survey shows there were 158.5 million nonfarm payroll employees in 2025 nationwide. Applying the 10.3% estimate to that workforce yield 16.3 million workers, meaning that at least 16.3 million workers nationwide likely experienced wage theft in any given week in 2025. Bernhardt et al. found that workers who experienced wage theft lost, on average, 15% of their weekly earnings. Using the BLS Current Population Survey (CPS), we find that the lowest-paid 15.1% of workers who are 18 years old or older and worked at least five hours per week—a conservative proxy for the population surveyed in Bernhardt et al.—had median weekly earnings of \$352 in 2025. Assuming 15% losses due to wage theft, the earnings of workers experiencing wage theft would have been \$414 if wage theft hadn't occurred, an average loss of \$62. Multiplying the estimated 16.3 million workers experiencing wage theft by the average loss of \$62, we find that the total amount lost by low wage workers to wage theft in a given week is \$1.01 billion. Annualized, this amounts to \$52.5 billion in wages stolen from low-wage workers each year.

¹⁷ Daniel Schneider, Elizabeth Kuhlman, Kristen Harknett, and David Weil. 2024. [*Compliance and the Complaint Gap: Labor Standards Violations in the California Service Sector*](#). The Shift Project at Harvard Kennedy School, May 2024.

¹⁸ Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities, 2009*, Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009.

¹⁹ This is an argument made by Judge Easterbrook in *Reyes v. Remington Hybrid Seed Co.* 495 F.3d 403 (7th Cir. 2007). In that decision, Easterbrook notes, "If Zarate [the labor broker in the case] had been solvent, Remington [the lead business in the case] would have to offer him enough that he could pay all the workers' wages (including the minimum wage and any overtime premium), cover the costs of fringe benefits such as housing, and still be able to

As described above, an estimated \$52.5 billion was lost by low-wage workers to all forms of wage theft in 2025. We use several sources of data to estimate how much of that \$52.5 billion was lost by workers in fissured establishments. As noted above, we conservatively estimate that in 2025, there were a total of 15.14 million employees working in “fissured establishments”—working for temporary help agencies (2.50 million), working for contract firms (2.28 million), or working for franchises (10.36 million).

To determine how many of these 15.14 million workers are low-wage, we turn to CWS microdata, which allow us to calculate the share of workers in contract firms and temporary help services who are low wage workers. Unfortunately, microdata from the most recent (2023) CWS survey have not yet been released, so we use microdata from the 2017 CWS survey. We find that the share of workers in contract firms or in temporary help services who are low-wage—defined as earning \$12 per hour or less in 2017—is 36.3 percent. Given wage growth between 2017 and 2025, \$12 in 2017 was roughly equivalent to \$17 in 2025.²⁰

Franchise workers are not identified in the CWS, so we simply assume that the share of workers in franchise firms who are low-wage is the same as the share of workers who are low-wage in contract firms and temporary help services. Multiplying 36.3% by our estimate of 15.14 million total workers in fissured establishments, we estimate that there are 5.5 million low-wage workers in fissured establishments.

There were 25.6 million workers who made less than \$17 an hour in 2025,²¹ which means that 21.5 percent (5.5 million/25.6 million) of low-wage workers are in fissured establishments. Assuming that the incidence of wage theft among low-wage workers is no higher in fissured establishments than in traditional establishments (an extremely conservative assumption), we can simply multiply this 21.5 percent by the total amount of wage theft from low-wage workers—\$52.5 billion—to estimate the amount of wage theft in fissured establishments. This comes out to \$11.28 billion.

Annual wage theft of \$11.28 billion in fissured establishments means that every percent increase in losses due to wage theft would lead to an aggregate transfer from workers to employers of \$112.8 million annually. This means that an increase in losses due to wage theft of *just 2 percent* as a result of the rule—an implausibly conservative increase considering many former joint employers would newly be able to avoid liability for FLSA violations—would lead to an aggregate transfer from workers to employers every year of \$225.6 million. Further, it is important to note that using the broader estimate described above of 20.8 million private-sector production and nonsupervisory workers in the fissured workplace, that number would be \$309.8 million.

Conclusion

DOL’s proposed rule undermines the original intent of our nation’s fundamental worker protection laws and, if implemented, its impact on working people will be negative and significant. The proposed rule would incentivize the further “fissuring” of the workplace, putting strong downward pressure on wages, and it would make it nearly impossible for millions of workers to get justice when they are the victims of wage theft. Conservatively, we estimate that, if implemented, this rule would cost workers just under \$1.0 billion annually—more than \$772.0 million due to wage suppression from an increase in workplace

make a profit. But when a contractor has no business or personal wealth at risk, he may be tempted to stiff the workers (as Zarate did) and then treating the principal firm as a separate employer is essential to ensure that the workers’ rights are honored.”

²⁰ \$12 was 66.1% of the median wage in 2017, and 66.1% of the median wage in 2025 was \$16.97. Economic Policy Institute, State of Working America Data Library, "[Hourly wage percentiles - Nominal hourly wage](#)," 2026.

²¹ [Low-Wage Workforce Tracker](#). Economic Policy Institute, January 2026.

fissuring and more than \$225.6 million from an increase in wage losses due to wage theft by employers. We urge DOL to abandon this flawed rulemaking and ensure a meaningful joint employer standard under the FLSA, our nation's fundamental worker protection law.

Sincerely,

Heidi Shierholz, Ph.D.
President
Economic Policy Institute

Samantha Sanders
Director of Government Affairs & Advocacy
Economic Policy Institute