



Full Committee Hearing: “Burdensome Regulations: Examining the Effects of DOL Rulemaking on America’s Job Creators” - Engine’s Statement

October 26, 2023

House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C., 20510

Dear Chairman Williams, Ranking Member Velázquez and members of the House Committee on Small Business,

Thank you for convening a hearing last week covering the effects of Department of Labor (DOL) rulemaking on 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 is critical for a startup as it scales, 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 integral to remaining at the forefront of innovation in the United States. Founders rely on the flexibility independent contractors provide their startups as they grow their teams. While budgetary concerns certainly are a consideration for startups as they hire, the reality is, particularly in their early stages, startups often do not have enough work to allow for the hiring of full time employees for many tasks. Instead, they need flexible talent who can fill project-by-project roles to build their products and services. Ensuring that startups can hire independent contractors help startups stretch every dollar of their limited resources for maximum impact.¹

Unfortunately, the Biden administration’s rule to reclassify independent contractors limits the ability of startups to hire the talent they need, requiring businesses to classify workers as employees if they are “economically dependent” on a company as determined by six factors.² A founder may easily in good faith believe a worker to be a contractor but may be unable to make that determination when trying to parse the analysis required under the rulemaking. While large, established companies have the resources to hire legal professionals and employment experts to navigate a changing regulatory landscape and to perform a complex assessment in order to

¹ Engine, *House Judiciary Antitrust Comments*, <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/617bfed3b500f2546d60c1d1/1635516116358/House+Judiciary+Antitrust+comments+-+Oct+20%2C+2021.pdf>

² Engine, *Startup News Digest 4/21/23*, <https://www.engine.is/news/startup-news-digest-042123-anyp9-34cc6-rxbyz-659n2-agnez-tn3k6-y3ran-mp8gg>

determine a worker's status as an employee or independent contractor, many startups do not have that luxury. And hiring assistance to ascertain whether they are meeting shifting regulatory requirements is simply outside the scope of many startups' budgets.

The DOL's rule upends the ability of many companies, including startups, to hire talent as needed and could either force them to hire full time employees they cannot afford or forgo hiring for needed roles, limiting their growth. As we've stated in the past, while established, large companies are well suited to handle the expense associated with employing a full time workforce, many startups operating on razor-thin budgets rely on contract labor for needs like web design or accounting services to fulfill temporary and one-off needs. As Grant Leah, the co-founder of Woodland-based startup Nytech, 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."³

The average startup launches with a bootstrap budget, and talent costs can be significant. Even the most successful of seed-stage startups are only working with an average of around \$55,000 per month in resources.⁴ With limited cash, founders have to choose between funding items that are all essential, such as R&D, advertising, and employees. Just one full-time engineer salary, for example, would account for over 10% of that average seed-stage startup's budget.⁵ And studies have indicated that independent contractors are critical to startup teams. The Mercatus Center found that "[s]ome 57 percent of startups indicate that the use of contractor labor is an essential part of their business models." Further, their results found that "79 percent of startups have at least one contractor," and that "technology startups overwhelmingly use contractor labor because in their early stages they require flexibility and face limited funding and uncertainty that preclude committing to an employee." These results are in contrast to findings for typical U.S. companies (versus technology startups), where per the U.S. Census Bureau, only 29% of businesses rely on contract labor.⁶

For startups that err on the side of caution and hire or shift to full-time workers, they must also compete with larger technology companies for the same talent that are often able to offer more robust compensation packages, which can significantly drive up the cost of full-time talent. Moreover, it is unclear what the cost to small businesses would be in forgoing hiring altogether due to the proposed rule, either because of an inability to afford to do so, or because of fear of hiring altogether, and to identify what these talent decisions mean for startup growth. There may also be associated job losses for workers employed by small businesses.

As was mentioned by members of this subcommittee, policymakers can take action in support of the startup ecosystem. Ensuring startups have the ability to make the best hiring choices

³ Edward Graham, *#Startups Everywhere: Woodland, California*, <https://www.engine.is/news/woodland-calif>

⁴ Engine, *the State of the Startup Ecosystem*, <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/60819983b7f8be1a2a99972d/1619106194054/The+State+of+the+Startup+Ecosystem.pdf>

⁵ *Id.*

⁶ 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.

to grow is paramount. And for regulations that limit the ability to hire independent contractors, policymakers should ensure these frameworks work for small, burgeoning 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 overly burdensome regulations that don't suit the startup ecosystem and limit flexibility for 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,

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