

AG Kaul: Multistate group of AGs oppose Trump administration rule change that endangers rights of millions of workers

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MADISON, Wis. – Attorney General Josh Kaul, along with a multistate group of 18 other attorneys general, today sent a comment letter opposing the U.S. Department of Labor’s proposal to narrow the interpretation of joint employment, thereby complicating how states enforce labor laws and leaving millions of workers vulnerable to labor violations.

“This proposed rule would weaken protections for working people and disadvantage employers that comply with the Fair Labor Standards Act,” said Attorney General Kaul. “The Trump administration shouldn’t adopt this rule.”

In the letter, sent today to U.S. Department of Labor (DOL) Secretary Alexander Acosta, the attorneys general challenge DOL’s proposed change to joint employer status under the Fair Labor Standards Act (FLSA), an interpretation that governs the liability of an employer who shares with another employer control over the terms and conditions of workers’ employment. The attorneys general contend that DOL has failed to justify this new interpretation and draws on outdated analysis that does not consider the changing nature of today’s workplace relationships, including the fact that a growing number of businesses are changing organizational models by outsourcing integral functions but still maintaining control of workers.

Under DOL’s proposed rule, joint employment would be determined by whether an employer hires or fires the employee, supervises and controls the employee’s schedule and working conditions, determines the employee’s rate and method of

payment, and maintains the employee's records. But according to the attorneys general, this proposal is inconsistent with the purpose of the FLSA – to protect workers – and ignores more than 30 years of private sector development during which the economy and the workplace have changed.

Further, the attorneys general write that DOL's proposed rule does not reflect today's workplace relationships, where businesses increasingly share employees using third-party management companies, independent contractors, staffing agencies, or other labor providers.

If the federal standard fails to encompass companies that pay for subcontracted employees while also controlling the terms of employment, the attorneys general contend that gaps in legal compliance will inevitably increase, leaving workers at greater risk of exploitation.

Today's comment letter was submitted by joined by California, Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.