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116TH CONGRESS
2D SESSION

H. R. 6245

To prohibit the Secretary of Labor from implementing or enforcing the final rule on joint employer status.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2020

Mr. KENNEDY introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To prohibit the Secretary of Labor from implementing or enforcing the final rule on joint employer status.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Upholding Worker Protections Act''.

SEC. 2. FINDINGS.

Congress finds that:

(1) Under the Fair Labor Standards Act (FLSA), an employee can have joint employers who are both responsible, individually and jointly, for

complying with the law's minimum wage, overtime, and child labor requirements.

(2) In adopting the FLSA, Congress established a broad definition of ''employ'' to include ''to suffer or permit to work''. In using this definition, Congress rejected the narrower common law standard of employment, which turns on the degree to which the employer has control over an employee.

(3) As the Supreme Court noted in United States v. Rosenwasser, the FLSA's definition of employment is the ''broadest definition that has ever been included in any one act''. The breadth of the FLSA's employment standard was necessary to accomplish its goal of eliminating substandard labor conditions.

(4) For decades, the Supreme Court and the Circuit Courts of Appeals have effectuated Congress's intent to broadly define employment, and thus joint employment, under the FLSA by applying an economic realities test to determine whether the employee is economically dependent on the potential joint employer.

(5) On January 16, 2020, the Labor Department published an interpretive regulation that seeks

to significantly limit joint employment liability under the FLSA.

(6) The Labor Department's interpretation conflicts with the FLSA, congressional intent, and judicial precedent by narrowly restricting joint employment to a question of control and rejecting the economic dependence inquiry.

(7) In recent decades, many employers have increasingly moved away from the direct hiring of employees and instead engaged subcontracted workers, temporary workers, and used franchisees, creating a ''fissuring'' of the workplace. Workers in the fissured workplace often have lower pay and limited benefits, exacerbating income inequality.

(8) As an interpretive regulation, this rule does not have the force of law, but will dictate how and if the Department will continue to hold employers accountable when they are jointly liable for FLSA violations.

(9) The Labor Department's flawed interpretive rule could increase wage theft and workplace fissuring by incentivizing employers to outsource work to labor intermediaries and subcontractors to avoid FLSA liability. Increased use of labor intermediaries or subcontractors that are prone to inadequate

FLSA compliance would leave workers vulnerable to wage theft. If such entities are thinly capitalized, workers may be unable to recover any back pay owed.

(10) According the Economic Policy Institute, increased wage theft and workplace fissuring under this interpretive rule could cost workers more than a billion dollars each year.

SEC. 3. PROHIBITION ON IMPLEMENTING OR ENFORCING FINAL RULE ON JOINT EMPLOYER STATUS.

Notwithstanding any other provision of law, the Secretary of Labor may not implement or enforce the final rule on ''Joint Employer Status under the Fair Labor Standards Act'' published by the Department of Labor in the Federal Register on January 16, 2020 (85 Fed. Reg. 2820 et seq.).

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