August 3, 2021

Dear Senator:

We write to urge your opposition to the nomination of David Weil to be Administrator of the Department of Labor's Wage and Hour Division. Weil, a professor at Brandeis University in Waltham, Massachusetts, held the same position in the Obama administration from 2014-2017. As both the economy and the job market recover from the effects of COVID-19, the Department of Labor and its Wage and Hour Division's importance has never been more evident.

Reinstating Weil as head of the DOL's Wage and Hour Division would represent a return to the same bureaucratic overregulation so prevalent in the Obama administration as well as a further rebuke of the deregulatory strides made in the Trump administration.

If Weil is confirmed, two of his highest priorities will likely be a reversal of the Trump Administration's Independent Contractor rule and the Joint Employer Final Rule.
The Independent Contractor rule governs the classification of workers as either "independent contractors" or "employees." Proponents of eliminating or rewriting the rule argue that forcing employers to classify more people as employees, not independent contractors, would help independent contractors receive more rights in the workplace. However, most independent contractors deplore this change as it limits their flexibility and freedom to control their hours and location of work. Moreover, this change would force millions of workers out of their jobs as they become too costly to retain as full-fledged employees.

Look at what happened after California passed AB 5, which dramatically narrowed who could be deemed an independent contractor: the job loss among independent contractors was so great that the legislature was forced to amend the law to exempt a very long list of professions. It is important to recognize that reclassifying independent contractors as full-time employees not only affects gig workers at companies such as Uber and Lyft, but also freelance journalists, construction workers, and truckers.

The Joint Employer Final Rule clarifies the circumstances under which an employer might be considered a "joint employer" under the Fair Labor Standards Act. Being deemed a joint employer would make the employer liable for overtime pay, minimum wage, and other requirements for a subcontractor's or franchisee's employees.

Eliminating the joint employer rule would deprive employers of certainty in their business relationships with subcontractors and franchisees. Without the guidance that the Trump Administration rule provides, employers will be less likely to impose on subcontractors or franchisees health and safety requirements, mandatory training on discrimination and harassment, or minimum wage and leave requirements: mandating any of these could result in their being deemed a joint employer. Franchisees and subcontractors are often small businesses, which public policy should be helping, not hamstringing.

In conclusion, confirming David Weil to this position will represent a return to the one-size-fits-all, government-knows-best model of labor regulation. America's workers and employers deserve better.

Sincerely,

Brent Wm. Gardner
Chief Government Affairs Officer
Americans for Prosperity

David Williams
President
Taxpayers Protection Alliance

Grover Norquist
President
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