



PRESS RELEASE

Attorney General Frosh Joins Coalition Fighting Attempts to Undermine Workplace Protections as COVID-19 Continues to Decimate State and National Economies *Coalition Opposes Proposed DOL Rule That Would Strip Workers of Key Protections*

BALTIMORE, MD (October 27, 2020) – Maryland Attorney General Brian E. Frosh has joined a coalition of 24 attorneys general, in addition to the cities of Philadelphia and Pittsburgh, and city agencies in New York and Chicago, in calling on the Trump Administration to stop the implementation of a proposed rule that would strip workers of key protections provided under the Fair Labor Standards Act (FLSA). The proposed rule – issued by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) – would make it easier for employers to change the classification of workers from employees to independent contractors, removing these workers from federal minimum wage and overtime pay requirements, and increasing taxes and other out-of-pocket costs for workers. The coalition yesterday sent a [comment letter](#) to Labor Secretary Eugene Scalia calling on the DOL to withdraw the rule and ensure the protection of U.S. workers.

“The DOL proposed rule will enable employers to classify millions of workers as independent contractors and strip them of basic labor protection and benefits,” said Attorney General Frosh. “This rule will harm workers by reducing their pay and health benefits, reducing their eligibility for workers compensation and unemployment benefits. It is a straight up attack on working families.”

The FLSA was signed into law over 80 years ago to establish a baseline of critical workplace protections, such as minimum wage and overtime, for workers across the country. In the letter, the coalition argues that the proposed rule would disregard the statutory text and purposes of the FLSA and break with established court precedents on the definition of “employee” and what qualifies as an independent contractor. By making this change, the DOL would specifically:

- Expose workers reclassified or misclassified as independent contractors to tax liability;
- Increase out-of-pocket costs for workers reclassified or misclassified – including unemployment insurance, workers’ compensation, and health care coverage; and
- Remove federal minimum wage and overtime pay requirements for workers since independent contractors do not qualify for FLSA protections, and further create confusion about whether state labor standards laws continue to apply to such workers.

The coalition also highlights how the DOL makes no satisfactory explanation for the proposed rule and makes no effort to quantify its real-world effects, such as how many workers will be reclassified or misclassified as independent contractors or how much money will transfer from workers to employers as a result of the rule. Further, the proposed rule would only exacerbate the sharp increase seen in recent decades of employers misclassifying workers as independent contractors.

The coalition also argues that the proposed rule is particularly troubling in light of the ongoing COVID-19 pandemic, which has left millions unemployed. The consequences of reclassification or misclassification at this time are concerning to workers who rely on workplace protections and benefits only available to employees, including wage and hour standards, employer-provided health insurance, and paid leave programs. For these reasons and others, the coalition argues that the proposed rule, if finalized, would violate the Administrative Procedure Act. The coalition asks the DOL to withdraw the proposed rule immediately.

Last month, the coalition asked DOL to extend the comment period from 30 days to 60 days so that stakeholders could provide thoughtful input. Every other significant regulatory action WHD published in 2019 and 2020 had at least 60 days to comment. The DOL rejected the coalition's request.

Joining Attorney General Frosh in filing the letter are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin; the cities of Philadelphia and Pittsburgh, Pennsylvania; the New York City Department of Consumer and Worker Protection; and the Office of Labor Standards for the City of Chicago.