

Congress of the United States
Washington, DC 20515

May 14, 2019

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Acosta:

We write regarding the Department of Labor Wage and Hour Division's (WHD) reinstatement of the practice of providing "opinion letters." Opinion letters are legal interpretations of the laws that WHD administers in response to requests from private parties about how the law applies to fact-specific situations. As such, we are extremely disappointed by the recent issuance of an opinion letter FLSA2019-6 to an undisclosed "virtual marketplace company" determining the classification of workers as employees or independent contractors under the Fair Labor Standards Act (FLSA) in the so-called "gig economy."

The unnamed company recipient of the letter has been told that its workforce is made up of contractors, not employees. Such a decision has significant repercussions as to whether it offers the federal minimum wage or overtime; or pays a share of Social Security taxes to its workforce. These crucial issues determine the basic standard of living for millions of working people. Given the magnitude of the issues at hand, it is unfortunate that the Department has chosen to set policy in such an important area through the device of an opinion letter. In our view, this is an unsettled and contentious statutory and regulatory area that requires a more thoughtful and prudent approach.

In order to understand more about the decision, we request the following questions answered:

1. How many requests did the WHD receive for opinion letters in regard to the employment status of workers hired via an internet site since opinion letter reinstatement?
2. Why was this company chosen?
3. Why did the WHD release a public announcement of this opinion letter in language implying it reflects a larger policy statement rather than the case-specific guidance?
4. How much latitude does the requesting company allow workers operating on its site to exert in regard to setting their own price and quality standards?
5. How much latitude in scheduling visits?
6. Are there any fees or penalties attached to any of this latitude, if, say a worker negotiates a different price or different day or time?
7. How does removing a worker from the platform due to low customer ratings differ from an employer firing an employee because of repeated customer complaints?
8. Why did DOL fail to include two criteria or ask for the skill involved and capital investment required of the workers in the letter?

9. What are the general criteria the WHD is applying to decisions to accept or reject requests for opinion letters?
10. How many opinion letters requests has WHD received from workers or worker advocacy organizations?
11. How many of those has WHD responded to? How does this response rate differ from the response rate from (a) businesses; (b) business associations; and (c) so-called platform businesses?
12. If the WHD is signaling a new policy in regard to how it will classify workers who are hired and work through platform business models, through what regulatory authority is this opinion letter being issued?
13. What means of appeal of those decisions (or of public comment) have been afforded for this use?
14. How will the Department assure policymakers that these decisions are not being made on a capricious basis, or favoring specific employers or business arrangements?

Mr. Secretary, the biggest economic challenge facing workers is that they are in jobs that do not pay them enough to live on—and the rise of alternative work arrangements has only exacerbated this issue. The Department of Labor must remain a bulwark for workers in the face of those who would try to skirt our nation's labor laws. We urge you to tread lightly in this area and we look forward to the answers to our questions.

Sincerely,



Rosa L. DeLauro
Chair
U.S. House of Representatives
Appropriations Subcommittee on Labor,
Health and Human Services, Education,
and Related Agencies



Sherrod Brown
Ranking Member
U.S. Senate
Committee on Banking, Housing,
and Urban Affairs