

October 28, 2020

ATTORNEY GENERAL RAOUL OPPOSES FEDERAL ATTEMPT TO UNDERMINE WORKPLACE PROTECTIONS

Chicago — Attorney General Kwame Raoul joined a coalition of 24 attorneys general, the cities of Philadelphia and Pittsburgh, Pa. and city agencies in Chicago and New York, in calling on the federal government 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 classify its workers as independent contractors. Doing so would remove these workers from federal minimum wage and overtime pay requirements, as well as other employment benefits such as unemployment, health care, and workers' compensation benefits, thus increasing taxes and other out-of-pocket costs for workers. Raoul and the coalition submitted a [comment letter](#) to Labor Secretary Eugene Scalia calling on the DOL to withdraw the rule and ensure the protection of workers.

"Implementing a rule that strips protections from workers is particularly unconscionable during the COVID-19 crisis," Raoul said. "Employees rely on proper classification to protect their pay requirements and benefits. I urge the federal government to withdraw this proposed rule to give workers some peace of mind during this already uncertain time."

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, Raoul and the coalition argue 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 who qualifies as an independent contractor. By making this change, the DOL would specifically:

- Expose workers reclassified or misclassified as independent contractors to tax liability.
- Leave workers without recourse, as many protections rely on workers being classified as employees, especially unemployment and workers' compensation.
- Increase out-of-pocket costs for workers reclassified or misclassified, including unemployment insurance, workers' compensation, and health care coverage.
- Remove federal minimum wage and overtime pay requirements for workers, since independent contractors do not qualify for FLSA protections.
- Create confusion about whether state labor standards laws continue to apply to such workers.

Raoul and the coalition also highlight the fact that the DOL does not provide a 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.

Finally, Raoul and the coalition argue 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, unemployment insurance, and paid leave programs.

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

The comment builds on Attorney General Raoul's efforts to fight unlawful employment practices. At the beginning of this year, a new law became effective that formally establishes the Worker Protection Unit within the Attorney General's office and provides the unit with the authority to enforce existing laws that protect workers' rights in Illinois. Attorney General Raoul encourages workers who have concerns about wage and hour violations or potentially unsafe working conditions to call his Workplace Rights Hotline at 1-844-740-5076 or to [file a complaint online](#).

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