Attorney General Grewal Joins Lawsuit Challenging Federal Rule that Would Strip Workers of Key Labor Protections

FOR IMMEDIATE RELEASE

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TRENTON – On February 26, Attorney General Gurbir S. Grewal joined a coalition of 17 Attorneys General in filing a lawsuit to stop the Trump Administration from eliminating key labor protections for workers. The lawsuit, filed in U.S. District Court in New York, challenges a U.S. Department of Labor (USDOL) rule that unlawfully seeks to narrow the joint employment standard under the Fair Labor Standards Act (FLSA), which establishes a baseline of critical workplace protections, such as minimum wage and overtime, for workers across the country.

The joint employment standard determines when more than one employer is responsible under the FLSA because both exert sufficient influence over a worker's employment. This change would undermine critical workplace protections for the country's low-and middle-income workers and could lead to increased wage theft and other labor law violations.

The Attorneys General contend that the rule will allow large companies to evade employment obligations and liabilities by relying on subcontractors and/or franchisee arrangements and, thus, avoiding being classified as a joint employer. That will mean that workers may only be able to pursue remedies against smaller, potentially undercapitalized subcontractors and/or franchisees.

The rule also makes workers more vulnerable to underpayment and wage theft, the lawsuit contends, by providing an incentive for such corporations to "offload their employment responsibilities to smaller companies with less sophistication and fewer resources to track hours, keep payroll records and train managers."

Ultimately, the lawsuit asserts, the new rule "will cost workers, many of whom work at minimum wage jobs and live paycheck to paycheck, over $1 billion."

"Here in New Jersey, we have a strong stake in protecting the rights of workers and guaranteeing them redress for wage and hour violations. That is why it's important for us to be part of today's lawsuit," said Attorney General Grewal. "This is just one of many unlawful rollbacks that will help large corporations while harming workers, particularly low- and middle-income workers."

"This is a sad day for working people. The Fair Labor Standards Act, a foundational element of labor law, was written to ensure 'a fair day's pay for a fair day's work' as well as to protect workers' health and safety by guarding against 'oppressive working hours.' Weakening the act makes it easier for employers to shirk their obligation to pay their workers – and makes workplaces less safe," said New Jersey Labor Commissioner Robert Asaro-Angelo. "New Jersey labor laws have a much more realistic assessment of the relationship between purported joint employers and the NJDOL will ensure that these complaints are reviewed in accordance with our laws."

Under the new Administration rule, corporations can only be categorized as "joint employers" – and therefore only be held liable for the actions of their subcontractors, franchisees or third-party managers – if it can be shown they have "direct control" over the other companies' policies.

The rule relies on the following four factors to determine joint employer status: whether the entity (1) hires or fires the employee; (2) supervises and controls the employee's work

schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records."

The rule does not permit consideration of other factors indicative of joint employment, such as whether an employee is economically dependent on a potential joint employer. Additionally, the rule only permits consideration of an employer's right to control an employee where there is evidence that the employer actually exercises that right.

Today's complaint opposes the rule's standard for joint employer status as incompatible with the intent of the FLSA, as well as years of judicial precedent.

The complaint points to a U.S. Supreme Court case – Rutherford v. McComb – as the seminal case and "controlling authority" regarding when a worker can be considered employed jointly by two entities.

In that case, the Supreme Court held that a slaughterhouse which had independent-contractor-supplied meat de-boners working on site was a joint employer of those workers. The court decided as it did, the lawsuit notes, despite the fact that the meat de-boners were hired by the independent contractor, and the slaughterhouse never attempted to exercise direct control over their hours.

The court's conclusion, the lawsuit explains, was based on its finding that a joint employment relationship "does not depend on isolated factors but rather upon the circumstances of the whole activity."

Led by the states of New York and Pennsylvania, today's lawsuit points out that, across the modern employment landscape, many corporations are now seeking to insulate themselves from liability by turning to independent contractors and franchise arrangements in a trend referred to as "fissuring."

If left to stand, the complaint asserts, the new rule will "upend [the] legal landscape" by providing "a de facto exemption" from joint employment liability for businesses that outsource hiring and supervisory responsibilities to third parties.

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