

117TH CONGRESS }  
2d Session } HOUSE OF REPRESENTATIVES { REPORT  
117-540

---

WAGE THEFT PREVENTION AND WAGE RECOVERY ACT  
OF 2022

---

OCTOBER 7, 2022.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

---

Mr. SCOTT of Virginia, from the Committee on Education and  
Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7701]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7701) to amend the Fair Labor Standards Act of 1938 and the Portal-to-Portal Act of 1947 to prevent wage theft and assist in the recovery of stolen wages, to authorize the Secretary of Labor to administer grants to prevent wage and hour violations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	9
Committee Action .....	9
Committee Views .....	11
Section-by-Section Analysis .....	17
Explanation of Amendments .....	19
Application of Law to the Legislative Branch .....	19
Unfunded Mandate Statement .....	19
Earmark Statement .....	20
Roll Call Votes .....	20
Statement of Performance Goals and Objectives .....	26
Duplication of Federal Programs .....	26
Hearings .....	26
Statement of Oversight Findings and Recommendations of the Committee .....	26
New Budget Authority and CBO Cost Estimate .....	26
Committee Cost Estimate .....	26
Changes in Existing Law Made by the Bill, as Reported .....	27
Minority Views .....	45

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Wage Theft Prevention and Wage Recovery Act of 2022”.

## **TITLE I—AMENDMENTS TO THE FAIR LABOR STANDARDS ACT OF 1938**

### **SEC. 101. REQUIREMENTS TO PROVIDE CERTAIN DISCLOSURES, REGULAR PAYSTUBS, AND FINAL PAYMENTS.**

The Fair Labor Standards Act of 1938 is amended by inserting after section 4 (29 U.S.C. 204) the following:

### **“SEC. 5. REQUIREMENTS TO PROVIDE CERTAIN DISCLOSURES, REGULAR PAYSTUBS, AND FINAL PAYMENTS.**

**“(a) DISCLOSURES.—**

“(1) INITIAL DISCLOSURES.—Not later than 15 days after the date on which an employer hires an employee who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, the employer of such employee shall provide such employee with an initial disclosure containing the information described in paragraph (3). Such initial disclosure shall be—

“(A) provided as a written statement or, if the employee so chooses, as a digital document provided through electronic communication; and  
“(B) made available in the employee’s primary language.

“(2) MODIFICATION DISCLOSURES.—Not later than the earlier of 5 days after the date on which any of the information described in paragraph (3) changes with respect to an employee described in paragraph (1) or the date of the next paystub following the date on which such information changes, the employer of such employee shall provide the employee with a modification disclosure containing all the information described in paragraph (3).

“(3) INFORMATION.—The information described in this paragraph shall include—

“(A) the rate of pay and whether the employee is paid by the hour, shift, day, week, or job, or by salary, piece rate, commission, or other form of compensation;

“(B)(i) an indication of whether the employee is being classified by the employer as an employee subject to the minimum wage requirements of section 6 or as an employee that is exempt from (or otherwise not subject to) such requirements as provided under section 3(m)(2), 6, 13, or 14, as well as the reason for the exemption; and

“(ii) in the case that such employee is not classified as being an employee subject to such minimum wage requirements, an identification of the section described in clause (i) providing for such classification;

“(C)(i) an indication of whether the employee is being classified by the employer as an employee subject to the overtime compensation requirements of section 7 or as an employee exempt from such requirements as provided under section 7 or 13; and

“(ii) in the case that such employee is not classified as being an employee subject to such overtime compensation requirements, an identification of the section described in clause (i) providing for such classification;

“(D) the name of the employer and any other name used by the employer to conduct business; and

“(E) the physical address of and telephone number for the employer’s main office or principal place of business, and a mailing address for such office or place of business if the mailing address is different than the physical address.

**“(b) PAYSTUBS.—**

“(1) IN GENERAL.—Every employer shall provide each employee of such employer who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, a paystub that corresponds to work performed by the employee during the applicable pay period and contains the information required under paragraph (3) in any form provided under paragraph (2).

“(2) FORMS.—A paystub required under this subsection shall be a written statement and may be provided in any of the following forms:

“(A) As a separate document accompanying any payment to an employee for work performed during the applicable pay period.

“(B) In the case of an employee who receives paychecks from the employer, as a detachable statement accompanying each paycheck.

“(C) As a digital document provided through electronic communication, subject to the employee affirmatively consenting to receive the paystubs in this form.

“(3) CONTENTS.—Each paystub shall contain all of the following information:

“(A) The name of the employee.

“(B) Except in the case of an employee who is exclusively paid a salary and is exempt from the overtime requirements of section 7, the total number of hours worked by the employee, including the number of hours worked per workweek, during the applicable pay period.

“(C) The total gross and net wages paid, and, except in the case of an employee who is exclusively paid a salary and is exempt from the overtime requirements of section 7, the rate of pay for each hour worked during the applicable pay period.

“(D) In the case of an employee who is paid any salary, the amount of any salary paid during the applicable pay period.

“(E) In the case of an employee employed at piece rates, the number of piece rate units earned, the applicable piece rates, and the total amount paid to the employee per workweek for the applicable pay period in accordance with such piece rates.

“(F) The rate of pay per workweek of the employee during the applicable pay period and an explanation of the basis for such rate.

“(G) The number of overtime hours per workweek worked by the employee during the applicable pay period and the compensation required under section 7 that is provided to the employee for such hours.

“(H) Any additional compensation provided to the employee during the applicable pay period, with an explanation of each type of compensation, including any allowances or reimbursements such as amounts related to meals, clothing, lodging, or any other item.

“(I) Itemized deductions from the gross income of the employee during the applicable pay period, and an explanation for each deduction.

“(J) The date that is the beginning of the applicable pay period and the date that is the end of such applicable pay period.

“(K) The name of the employer and any other name used by the employer to conduct business.

“(L) The name and phone number of a representative of the employer for contact purposes.

“(M) Any additional information that the Secretary reasonably requires to be included through notice and comment rulemaking.

“(c) MODEL DISCLOSURES AND PAY STUB.—The Secretary shall prescribe model disclosures and a model pay stub that may be used to satisfy the requirements of subsections (a) and (b), respectively. The Secretary shall make the model disclosures and the model pay stub publicly available to employers.

“(d) FINAL PAYMENTS.—

“(1) IN GENERAL.—Not later than 14 days after an individual described in paragraph (4) terminates employment with an employer (by action of the employer or the individual), or on the date on which such employer pays other employees for the pay period during which the individual so terminates such employment, whichever date is earlier, the employer shall provide the individual with a final payment, which includes all compensation due to such individual for all time worked and benefits incurred (including retirement, health, leave, fringe, and other benefits) by the individual as an employee for the employer.

“(2) CONTINUING WAGES.—An employer who violates the requirement under paragraph (1) shall, for each day, not to exceed 30 days, of such violation provide the individual described in paragraph (4) with compensation at a rate that is equal to the regular rate of compensation, as determined under this Act, to which such individual was entitled when such individual was an employee of such employer.

“(3) LIMITATION.—Notwithstanding paragraphs (1) and (2), an individual described in paragraph (4) shall not be entitled to the compensation described under paragraph (2) if the employer successfully demonstrates that—

“(A) the employer made a good-faith effort to provide the final payment described in paragraph (1); and

“(B) the individual refused or otherwise intentionally avoided receiving such final payment.

**(4) INDIVIDUAL.**—An individual described in this paragraph is an individual who was employed by the employer, and through such employment, in any workweek, was engaged in commerce or in the production of goods for commerce, or was employed in an enterprise engaged in commerce or in the production of goods for commerce.”.

**SEC. 102. RIGHT TO FULL COMPENSATION.**

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 7 (29 U.S.C. 207) the following:

**“SEC. 8. RIGHT TO FULL COMPENSATION.**

“(a) IN GENERAL.—In the case of an employment contract or other employment agreement, including a collective bargaining agreement, that specifies that an employer shall compensate an employee (who is described in subsection (b)) at a rate that is higher than the rate otherwise required under this Act, the employer shall compensate such employee at the rate specified in such contract or other employment agreement.

“(b) EMPLOYEE ENGAGED IN COMMERCE.—The requirement under subsection (a) shall apply with respect to any employee who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce.”.

(b) CONFORMING AMENDMENT.—The Fair Labor Standards Act of 1938 is amended by repealing section 10 (29 U.S.C. 210).

**SEC. 103. CIVIL AND CRIMINAL ENFORCEMENT.**

(a) PROHIBITED ACTS.—Section 15(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)) is amended—

(1) in paragraph (1), by striking “section 6 or section 7” and inserting “section 6, 7, or 8”; and

(2) in paragraph (2), by striking “section 6 or section 7” and inserting “section 5, 6, 7, or 8”.

(b) DAMAGES.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) in section 4(f) (29 U.S.C. 204(f)), in the third sentence, by striking “for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages” and inserting “for unpaid wages, or unpaid overtime compensation, as well as interest and liquidated damages”;

(2) in section 6(d)(3) (29 U.S.C. 206(d)(3)), by striking “minimum”;

(3) in section 16 (29 U.S.C. 216)—

(A) in subsection (b)—

(i) by striking “section 6 or section 7” each place it appears and inserting “section 6, 7, or 8”;

(ii) by striking “minimum” each place it appears;

(iii) in the first sentence, by striking “and in an additional equal amount as liquidated damages” and inserting “the amount of any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the second sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation”;

(iv) in the second sentence, by striking “wages lost and an additional equal amount as liquidated damages” and inserting “wages lost, including any unpaid wages or any unpaid overtime compensation, the amount of any interest on such wages lost accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to 3 times the amount of such wages lost”;

(v) by striking the fifth sentence; and

(vi) by adding at the end the following: “Notwithstanding chapter 1 of title 9, United States Code (commonly known as the ‘Federal Arbitration Act’), or any other law, the right to bring an action, including a joint, class, or collective claim, in court under this section cannot be waived by an employee as a condition of employment or in a pre-dispute arbitration agreement.”; and

(B) in subsection (c)—

(i) by striking “minimum” each place the term appears;

(ii) in the first sentence—

(I) by striking “section 6 or 7” and inserting “section 6, 7, or 8”; and

(II) by striking "and an additional equal amount as liquidated damages" and inserting ", any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the third sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation";

(iii) in the second sentence, by striking "and an equal amount as liquidated damages." and inserting ", any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the third sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation. In the event that the employer violates section 15(a)(3), the Secretary may bring an action in any court of competent jurisdiction to recover the amount of any wages lost, including any unpaid wages or any unpaid overtime compensation, any interest on such wages lost accrued at the prevailing rate, an additional amount as liquidated damages that is equal to 3 times the amount of such wages lost, and any such legal or equitable relief as may be appropriate."; and

(iv) in the third sentence, by striking "sections 6 and 7" and inserting "section 6, 7, or 8"; and

(4) in section 17 (29 U.S.C. 217), by striking "minimum".

(c) CIVIL FINES.—Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2)(A) Subject to subparagraph (B), any person who violates section 6, 7, or 8, relating to wages, shall be subject to a civil fine that is not to exceed \$22,030 per each employee affected for each initial violation of such section.

"(B) Any person who repeatedly or willfully violates section 6, 7, or 8, relating to wages, shall be subject to a civil fine that is not to exceed \$110,150 per each employee affected for each such violation.

"(C) Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed \$12,340 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, any interest on wages lost accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to 2 times the amount of wages lost, as described in subsection (b).";

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (5), (6), and (7), respectively; and

(3) by inserting after paragraph (2) the following:

"(3) Any person who violates subsection (a) or (b) of section 5 shall—

"(A) for the initial violation of such subsection, be subject to a civil fine that is not to exceed \$50 per each employee affected; and

"(B) for each repeated or willful violation of such subsection, be subject to a civil fine that is not to exceed \$100 per each employee affected.

"(4) Any person who violates section 11(c) shall—

"(A) for the initial violation, be subject to a civil fine that is not to exceed \$1,000 per each employee affected; and

"(B) for each repeated or willful violation, be subject to a civil fine that is not to exceed \$5,000 per each employee affected."

(d) CRIMINAL PENALTIES.—Section 16(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(a)) is amended—

(1) by striking "Any person" and inserting "(1) Any person";

(2) in the first sentence, by striking "\$10,000" and inserting "\$10,000 per each employee affected";

(3) in the second sentence, by striking "No person" and inserting "Subject to paragraph (2), no person"; and

(4) by adding at the end the following:

"(2)(A) Notwithstanding any other provision of this Act, the Secretary shall refer any case involving a covered offender described in subparagraph (B) to the Department of Justice for prosecution.

"(B) A covered offender described in this subparagraph is a person who willfully violates any of the following:

"(i) Section 11(c) by falsifying any records described in such section.

"(ii) Section 6, 7, or 8, relating to wages.

"(iii) Section 15(a)(3).".

**SEC. 104. RECORDKEEPING.**

(a) IN GENERAL.—Section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) is amended by adding at the end the following: “In the event that an employee requests an inspection of the records described in this subsection that pertain to such employee from the employer, orally or in writing, the employer shall provide the employee with a copy of the records for a period of up to 5 years prior to such request being made. Not later than 21 days after an employee requests such an inspection, the employer shall comply with the request.”.

(b) REBUTTABLE PRESUMPTION.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215) is amended by adding at the end the following:

“(c) In the event that an employer violates section 11(c) and any regulations issued pursuant to such section, resulting in a lack of a complete record of an employee’s hours worked or wages owed, the employee’s production of credible evidence and testimony regarding the amount or extent of the work for which the employee was not compensated in compliance with the requirements under this Act shall be sufficient to create a rebuttable presumption that the employee’s records are accurate. Such presumption shall be rebutted only if the employer produces evidence of the precise amount or extent of work performed or evidence to show that the inference drawn from the employee’s evidence is not reasonable.”.

## **TITLE II—AMENDMENTS TO THE PORTAL-TO-PORTAL ACT OF 1947**

**SEC. 201. INCREASING AND TOLLING STATUTE OF LIMITATIONS.**

Section 6 of the Portal-to-Portal Act of 1947 (29 U.S.C. 255) is amended—

- (1) in the matter preceding paragraph (a), by striking “minimum”;
- (2) in paragraph (a)—
  - (A) by striking “may be commenced within two years” and inserting “may be commenced within 4 years”;
  - (B) by striking “unless commenced within two years” and inserting “unless commenced within 4 years”; and
  - (C) by striking “may be commenced within three years” and inserting “may be commenced within 5 years”;
- (3) in paragraph (d), by striking the period and inserting “; and”; and
- (4) by adding at the end the following:

“(e) with respect to the running of any statutory period of limitation described in this section, the running of such statutory period shall be deemed suspended during the period beginning on the date on which the Secretary of Labor notifies an employer of an initiation of an investigation or enforcement action and ending on the date on which the Secretary notifies the employer that the matter has been officially resolved by the Secretary.”.

## **TITLE III—WAGE THEFT PREVENTION AND WAGE RECOVERY GRANT PROGRAM**

**SEC. 301. DEFINITIONS.**

In this title:

- (1) COMMUNITY PARTNER.—The term “community partner” means any stakeholder with a commitment to enforcing wage and hour laws and preventing abuses of such laws, including any—
  - (A) State department of labor;
  - (B) attorney general of a State, or other similar authorized official of a political subdivision thereof;
  - (C) law enforcement agency;
  - (D) consulate;
  - (E) employee or advocate of employees, including a labor organization, community-based organization, faith-based organization, business association, or nonprofit legal aid organization;
  - (F) academic institution that plans, coordinates, and implements programs and activities to prevent wage and hour violations and recover unpaid wages, damages, and penalties; or
  - (G) any municipal agency responsible for the enforcement of local wage and hour laws.
- (2) COMMUNITY PARTNERSHIP.—The term “community partnership” means a partnership between—

- (A) a working group consisting of community partners; and
- (B) the Department of Labor.
- (3) **ELIGIBLE ENTITY.**—The term “eligible entity” means an entity that is any of the following:
  - (A) A nonprofit organization, including such an organization that is a community-based organization, faith-based organization, or labor organization, that provides services and support to employees, including assisting such employees in recovering unpaid wages.
  - (B) An employer.
  - (C) A business association.
  - (D) An institution of higher education, as defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).
  - (E) A partnership between any of the entities described in subparagraphs (A) through (D).
- (4) **EMPLOY; EMPLOYEE; EMPLOYER.**—The terms “employ”, “employee”, and “employer” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).
- (5) **SECRETARY.**—The term “Secretary” means the Secretary of Labor.
- (6) **WAGE AND HOUR LAW.**—The term “wage and hour law” means any Federal law enforced by the Wage and Hour Division of the Department of Labor, including any provision of this Act enforced by such division.
- (7) **WAGE AND HOUR VIOLATION.**—The term “wage and hour violation” refers to any violation of a Federal law enforced by the Wage and Hour Division of the Department of Labor, including any provision of this Act enforced by such division.

**SEC. 302. WAGE THEFT PREVENTION AND WAGE RECOVERY GRANT PROGRAM.**

- (a) **IN GENERAL.**—The Secretary shall provide grants to eligible entities to assist employees and employers.
- (b) **GRANTS.**—A grant provided under this section shall be designed to—
  - (1) support an eligible entity in establishing and supporting the activities described in subsection (c)(1); and
  - (2) develop community partnerships to expand and improve cooperative efforts to—
    - (A) prevent and reduce wage and hour violations;
    - (B) assist employees in recovering back pay for any such violations; and
    - (C) assist employers in complying with wage and hour laws.
- (c) **USE OF FUNDS.**—The grants described in this section shall assist eligible entities in establishing and supporting activities that include—
  - (1) disseminating information and conducting outreach and training to educate employees about their rights under wage and hour laws;
  - (2) conducting educational and compliance training for employers about their obligations under wage and hour laws;
  - (3) providing assistance to employees in filing claims of wage and hour violations; and
  - (4) any other activities as the Secretary may reasonably prescribe through notice and comment rulemaking.
- (d) **TERM OF GRANTS.**—Each grant made under this section shall be available for expenditure for a period that is not to exceed 3 years.
- (e) **APPLICATIONS.**—
  - (1) **IN GENERAL.**—An eligible entity seeking a grant under this section shall submit an application for such grant to the Secretary in accordance with this subsection.
  - (2) **PARTNERSHIPS.**—In the case of an eligible entity that is a partnership described in section 301(4)(E), the eligible entity may submit a joint application that designates a single entity as the lead entity for purposes of receiving and disbursing funds.
  - (3) **CONTENTS.**—An application under this subsection shall include—
    - (A) a description of a plan for the program that the eligible entity proposes to carry out with a grant under this section, including a long-term strategy and detailed implementation plan that reflects expected participation of, and partnership with, community partners;
    - (B) information on the prevalence of wage and hour violations in each community or State the eligible entity proposes to serve;
    - (C) information on any industry or geographic area targeted by the plan for such program;
    - (D) information on the type of outreach and relationship building that will be conducted under such program;

(E) information on the training and education that will be provided to employees and employers under such program; and  
 (F) any additional information the Secretary deems relevant.

(f) SELECTION.—

(1) COMPETITIVE BASIS.—In accordance with this subsection, the Secretary shall, on a competitive basis, select grant recipients from among eligible entities that have submitted an application under subsection (e).

(2) PRIORITY.—In selecting grant recipients under paragraph (1), the Secretary shall give priority to eligible entities that—

(A) serve employees or employers in any industry or geographic area that is most highly at risk for noncompliance with wage and hour violations, as identified by the Secretary; and

(B) demonstrate past and ongoing work to prevent wage and hour violations or to recover unpaid wages.

(g) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 60 days after receiving notification of selection for a grant under this section, the grant recipient shall negotiate and finalize with the Secretary a memorandum of understanding that sets forth specific goals, objectives, strategies, and activities that will be carried out under the grant by such recipient through a community partnership.

(2) SIGNATURES.—A representative of the grant recipient (or, in the case of a grant recipient that is an eligible entity described in section 301(4)(E), a representative of each entity that composes the grant recipient) and the Secretary shall sign the memorandum of understanding under this subsection.

(3) REVISIONS.—The memorandum of understanding under this subsection shall be reviewed and revised by the grant recipient and the Secretary each year for the duration of the grant.

(h) PERFORMANCE EVALUATIONS.—The Secretary shall develop guidelines for evaluating the activities of each program or project funded under this section.

(i) REVOCATION OR SUSPENSION OF FUNDING.—If the Secretary determines that a recipient of a grant under this section is not in compliance with the terms and requirements of the memorandum of understanding under subsection (g), the Secretary may revoke or suspend (in whole or in part) the funding of the grant.

**SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated \$50,000,000 for fiscal year 2023 and for each subsequent fiscal year through fiscal year 2026, to remain available until expended, to carry out the grant program under section 302.

## **TITLE IV—RELATION TO OTHER LAWS, REGULATIONS, AND EFFECTIVE DATE**

**SEC. 401. RELATION TO OTHER LAWS.**

(a) IN GENERAL.—Section 18(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 218(a)) is amended by adding at the end the following: “The requirements of section 5 shall not preempt or supersede any requirement under State or local law that an employer disclose the rate, frequency, or classification of pay at any time during an individual’s employ, or that an employer provide regular paystubs or earnings statements to employees, so long as such requirement is at least as comprehensive as the requirements described under such section.”.

(b) ASSISTANCE TO EMPLOYERS.—The Secretary of Labor shall provide such assistance to employers operating in more than one State as may be necessary to ensure compliance with the amendments made by this Act.

**SEC. 402. REGULATIONS.**

Not later than 18 months after the date of enactment of this Act, the Secretary of Labor shall promulgate such regulations as are necessary to carry out this Act and the amendments made by this Act.

**SEC. 403. EFFECTIVE DATE.**

The amendments made by titles I and II shall take effect on the date that is the earlier of—

- (1) the date that is 6 months after the date on which the final regulations are promulgated by the Secretary of Labor under section 401; or
- (2) the date that is 18 months after the date of enactment of this Act.

## PURPOSE AND SUMMARY

The purpose of H.R. 7701, the *Wage Theft Prevention and Wage Recovery Act of 2022* (Wage Theft Act), is to protect workers and law-abiding businesses. It does so by amending the *Fair Labor Standards Act* (FLSA) and Portal-to-Portal Act to require employers covered by the FLSA to provide regular paystubs and access to employment records to their workers; increasing maximum civil monetary penalties and damages to fully compensate workers for and deter wage violations; allowing workers to recover full back wages under the FLSA rather than only up to the federal minimum wage; prohibiting the use of mandatory arbitration and collective action waivers in employment agreements; increasing the statute of limitations so workers have additional time to bring wage claims; and establishing a grant program to educate workers about their rights under wage and hour laws, help employers comply with those laws, and provide assistance to employees in filing claims for wage and hour violations.

The Wage Theft Act has been endorsed by the National Employment Law Project (NELP), Economic Policy Institute (EPI), AFL-CIO, Service Employees International Union (SEIU), International Brotherhood of Teamsters, American Federation of State, County and Municipal Employees (AFSCME), American Federation of Teachers (AFT), Transport Workers Union (TWU), United Mineworkers of America (UMWA), United Food and Commercial Workers International Union (UFCW), International Association of Machinists and Aerospace Workers (IAM), American Federation of Government Employees (AFGE), Kalmanovitz Initiative for Labor & the Working Poor at Georgetown University, Main Street Alliance, National Women's Law Center (NWLC), TakeRoot Justice, Jewish Labor Committee, Arise Chicago, Faith Action for All, Reconstructionist Rabbinical Association, T'ruah: The Rabbinic Call for Human Rights, and Disciples Center for Public Witness (Disciples of Christ).

## COMMITTEE ACTION

### 114TH CONGRESS

On January 13, 2016, Rep. Robert C. "Bobby" Scott (D-VA-3) introduced H.R. 4376, the *Pay Stub Disclosure Act*. H.R. 4376 was referred to the Committee on Education and the Workforce.

On March 16, 2016, Rep. Rosa DeLauro (D-CT-3) introduced H.R. 4763, the *Wage Theft Prevention and Wage Recovery Act*. H.R. 4763 was referred to the Committee on Education and the Workforce.

### 115TH CONGRESS

On July 27, 2017, Rep. DeLauro introduced H.R. 3467, the *Wage Theft Prevention and Wage Recovery Act*. H.R. 3467 was referred to the Committee on Education and the Workforce.

### 116TH CONGRESS

On July 11, 2019, Rep. DeLauro introduced H.R. 3712, the *Wage Theft Prevention and Wage Recovery Act*. H.R. 3712 was referred to the Committee on Education and Labor.

## 117TH CONGRESS

On May 10, 2022, Rep. DeLauro introduced H.R. 7701, the *Wage Theft Prevention and Wage Recovery Act*. H.R. 7701 was referred to the Committee on Education and Labor.

On May 11, 2022, the Committee on Education and Labor's (Committee) Subcommittee on Workforce Protections held a hearing entitled “*Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages*” (May 11th Hearing). The witnesses were: Ms. Karen Cacace, Labor Bureau Chief, New York State Office of the Attorney General, New York, NY; Mr. Francisco Esparza, Representative, United Brotherhood of Carpenters, Upper Marlboro, MD; Ms. Tammy McCutchen, Senior Affiliate, Resolution Economics, Washington, DC; and Mr. Daniel Swenson-Klatt, Owner, Butter Bakery Café, Minneapolis, MN. The Committee heard testimony on how stronger state wage and hour law provisions could serve as examples to improve the FLSA, the harmful impact the wage theft crisis is having on workers, and how honest businesses are left at a competitive disadvantage when unscrupulous employers do not pay workers what they are owed.

On May 18, 2022, the Committee marked up H.R. 7701. An Amendment in the Nature of a Substitute (ANS) was offered by Rep. Alma Adams (D-NC-12) that incorporated the provisions of H.R. 7701, as introduced, and made the following modifications:

- requires the Secretary of Labor (Secretary) to prescribe model disclosures and pay stubs and make them publicly available to employers;
- narrows and clarifies the Wage Theft Prevention and Wage Recovery Grant Program established in section 302 of the bill;
- eliminates the Government Accountability Office (GAO) study that would review the Wage Theft Prevention and Wage Recovery Grant Program;
- ensures state laws that are more comprehensive than those established in the bill are not preempted;
- directs the Department of Labor (DOL) to provide compliance assistance to employers operating in more than one state; and
- makes technical and clarifying changes.

Four amendments to the ANS were offered:

- Rep. Fred Keller (R-PA-12) offered an amendment specifying that, for the purposes of the bill's pay stub, disclosure requirements, and right to full compensation provisions, the nature and degree of an individual's control over his or her work and the opportunity to earn profits or incur losses based on individual initiative are core factors in determining a worker's classification as an employee or independent contractor. The amendment was defeated by a vote of 19 Yeas and 27 Nays.
- Rep. Bob Good (R-VA-5) offered an amendment exempting employers with either fewer than 10 employees or annual sales under \$1,000,000 from the bill's increased civil penalties. The amendment was defeated by a vote of 19 Yeas and 27 Nays.
- Rep. James Comer (R-KY-1) offered an amendment specifying that, for the purposes of the bill's pay stub, disclosure requirements, and right to full compensation provisions, employ-

ers may only be considered a joint employer of another employer's employee when the initial employer directly, actually, and immediately exercises significant control over the employee's essential terms and conditions of employment. The amendment was defeated by a vote of 19 Yeas and 27 Nays.

- Rep. Mariannette Miller-Meeks (R-IA-2) offered a substitute amendment striking the text of the ANS and inserting the text of H.R. 5743, the Ensuring Workers Get PAID Act of 2021, which codifies the Trump Administration's Payroll Audit Independent Determination (PAID) program. The amendment was defeated by a vote of 17 Yeas and 27 Nays.

The ANS was adopted by voice vote. The Committee ordered H.R. 7701 to be reported favorably, as amended, to the House of Representatives by a vote of 27 Yeas and 19 Nays.

#### COMMITTEE VIEWS

The Committee has jurisdiction over federal wage and hour laws and a history of advancing consequential legislation in this area.

#### WAGE THEFT IS A MULTI-BILLION DOLLAR CRISIS THAT DISPROPORTIONATELY IMPACTS LOW-WAGE WORKERS, WOMEN, AND WORKERS OF COLOR

Wage theft is the failure to pay workers the full amount of wages for which they are legally entitled.<sup>1</sup> Wage theft occurs in various ways, including paying workers less than the legal minimum wage, failing to pay for hours in excess of a 40-hour work week, making employees work off-the-clock, taking illegal deductions from wages, and confiscating tips.<sup>2</sup> Wage theft is a multi-billion-dollar problem.<sup>3</sup> Each year, employers steal at least \$15 billion from workers' paychecks in minimum wage violations alone,<sup>4</sup> with all forms of wage theft possibly exceeding \$50 billion annually in stolen compensation.<sup>5</sup> Dollar-for-dollar, wage theft is larger than all forms of property crime combined.<sup>6</sup>

Wage theft disproportionately hurts lower paid and vulnerable segments of the workforce, as 17% of low-wage workers report being paid less than their state's minimum wage.<sup>7</sup> In the service industry, 35% of tipped workers report being paid below their state's minimum wage, and 47% say they are not being compensated for time-and-a-half overtime work.<sup>8</sup> In one recent example in New Hampshire, the DOL found that two restaurants—operating under the same name in two different cities—along with a general manager stole over \$445,000 in wages from their workers

---

<sup>1</sup> DAVID COOPER & TERESA KROEGER, ECON. POL'Y INST., EMPLOYERS STEAL BILLIONS FROM WORKERS' PAYCHECKS EACH YEAR 7 (2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> CELINE McNICHOLAS ET AL., ECON. POL'Y INST., TWO BILLION DOLLARS IN STOLEN WAGES WERE RECOVERED FOR WORKERS IN 2015 AND 2016—AND THAT'S JUST A DROP IN THE BUCKET 3 (2017), <https://files.epi.org/pdf/138995.pdf>.

<sup>4</sup> COOPER & KROEGER, *supra* note 1 at 2.

<sup>5</sup> McNICHOLAS ET AL., *supra* note 3 at 3.

<sup>6</sup> See Jeff Spross, *One of the biggest crime waves in America isn't what you think it is*, THE WEEK (Aug. 16, 2016), <https://theweek.com/articles/642568/biggest-crime-waves-america-isnt-what-think>.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> ONE FAIR WAGE & U.C. BERKELEY FOOD LABOR RSCH. CTR., NO RIGHTS, LOW WAGES, NO SERVICE 2 (2021), [https://onefairwage.site/wp-content/uploads/2021/09/OFW\\_NationalWageTheft\\_UpdatedPhoto-1.pdf](https://onefairwage.site/wp-content/uploads/2021/09/OFW_NationalWageTheft_UpdatedPhoto-1.pdf).

through their failure to pay overtime and wages at or above the minimum wage rate.<sup>9</sup>

Minimum wage violations also disproportionately impact women and workers of color.<sup>10</sup> 55% of wage theft victims are women despite making up 46.6% of the total minimum wage eligible workforce.<sup>11</sup> 52.9% of wage theft victims are workers of color despite constituting 44.3% of the minimum wage eligible workforce.<sup>12</sup>

Workers in poverty are also disproportionately affected by the wage theft crisis. Workers who are victims of a minimum wage violation are “more than three times as likely to be in poverty as someone chosen at random in the eligible workforce.”<sup>13</sup> Reducing wage theft would have the additional benefit of poverty reduction:

If all workers experiencing minimum wage violations were paid the applicable minimum wage for all reported hours worked, it would lift 31 percent of those in poverty above the poverty line. Consequently, the poverty rate among these workers would fall from 21.4 percent to 14.8 percent, and the overall poverty rate among the minimum-wage-eligible workforce would decline from 6.9 percent to 6.6 percent.<sup>14</sup>

At the May 11th Hearing, Mr. Esparza shared his own experience as a victim of wage theft and now as an organizer helping other workers who have experienced wage theft. Mr. Esparza stated:

[W]e see wage theft, worker misclassification, and construction industry tax fraud running rampant in the underground economy. The actions workers have taken [to recover wages] have not deterred unscrupulous contractors and labor brokers from stealing wages on the most vulnerable workers so that they can profit more. These profits are not only on the backs of the workers they victimize, but the honest U.S. taxpayers, like me.<sup>15</sup>

#### CURRENT CIVIL PENALTIES AND DAMAGES FAIL TO DETER WAGE THEFT VIOLATIONS

Although practices such as failure to pay minimum wage and overtime for all hours worked are already illegal under the FLSA,<sup>16</sup> the law’s penalties and damages provisions fail to deter wage theft. Furthermore, employers use a variety of legal loopholes to evade full accountability. In effect, dishonest employers can exploit current law to steal workers’ wages and use those savings on labor costs to offer below-market rates for their products and services and pay minor penalties in the rare circumstances that they are

<sup>9</sup> Dep’t of Labor, *Two New Hampshire restaurants to pay \$890K in back wages, damages to 63 employees after US Department of Labor investigation, litigation*, (April 25, 2022) <https://www.dol.gov/newsroom/releases/whd/whd20220425>.

<sup>10</sup> COOPER & KROEGER, *supra* note 1 at 15–16.

<sup>11</sup> *Id.* at 17.

<sup>12</sup> *Id.* at 19. Overall, minimum wage violations affect 4.9% of Black and 5.1% of Hispanic workers generally compared to 3.5% of White workers. *Id.*

<sup>13</sup> COOPER & KROEGER, *supra* note 1 at 14.

<sup>14</sup> *Id.*

<sup>15</sup> Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages, Hearing Before the Subcomm. on Worker Protections of the H. Comm. on Educ. and Lab., 117th Cong. (2022) (Statement of Francisco Esparza, Representative, United Brotherhood of Carpenters, at 2).

<sup>16</sup> Fair Labor Standards Act of 1938, Pub. L. No. 75–718, 52 Stat. 1060, 29 U.S.C. § 201 *et seq.*

caught. As a result, unscrupulous employers gain an edge over their law-abiding competitors. As noted in Mr. Swenson-Klatt's written testimony for the May 11th Hearing, these illegal actions are a "profitable practice [for low road employers] that hurts small businesses like mine by creating an unfair playing field in a competitive market."<sup>17</sup>

Currently, the FLSA's maximum civil monetary penalties for wage theft are just \$2,203, and penalties are only assessed for repeated or willful violations.<sup>18</sup> Only employers that fail to pay their tipped workers can face a penalty for an initial violation, and the maximum penalty is only \$1,234.<sup>19</sup> Additionally, there are no civil monetary penalties for recordkeeping violations.<sup>20</sup> Meanwhile, according to a 2017 study conducted by the Economic Policy Institute (EPI), on average, hourly workers who are victims of wage theft lost 25 percent of their annual earnings, or \$3,300, in stolen wages.<sup>21</sup> According to Jenn Round, who is a fellow at the Center for Innovation in Worker Organization at Rutgers University, "Some companies are doing a cost-benefit analysis and realize it's cheaper to violate the law, even if you get caught."<sup>22</sup>

Unfortunately, this is a decades-old problem. In 1981, the General Accounting Office<sup>23</sup> concluded that "many employers appear to have willfully violated the [FLSA] and that current enforcement actions have not resulted in penalties that would deter these violations."<sup>24</sup> Ms. Karen Cacace, the Labor Bureau Chief for the New York State Office of Attorney General, also noted the inadequacy of current civil penalties under the FLSA in her testimony at the May 11th Hearing, stating that:

Increasing penalties overall may be the most effective method of deterring employers from violating the substantive provisions of the FLSA. For many employers, the cost of having to pay their employees once a wage theft claim is filed is not significant enough to deter them from violating the law.<sup>25</sup>

The FLSA's damages provisions are also inadequate at deterring wage theft. Currently, employers found liable for unpaid wages and overtime are only required to pay an "equal" amount as liquidated damages, which are additional damages awarded to reflect the

---

<sup>17</sup> Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages, Hearing Before the Subcomm. on Worker Protections of the H. Comm. on Educ. and Lab., 117th Cong. (2022) (Statement of Daniel Swenson-Klatt, Owner/Operator, Butter Bakery Café, at 3).

<sup>18</sup> FLSA statutory language sets the original penalty amount at \$1,100, but the DOL has updated the penalty amount for inflation via federal regulation. See 87 Fed. Register 2335 (Jan. 14, 2022); 29 CFR 578.3.

<sup>19</sup> *Id.*

<sup>20</sup> See 29 U.S.C. §§ 211, 216.

<sup>21</sup> COOPER & KROEGER, *supra* note 1 at 1.

<sup>22</sup> U.S. companies are stealing pay from low-wage workers, report says, CBS NEWS (May 4, 2021), <https://www.cbsnews.com/news/wage-theft-us-companies-workers/> (quoting Jenn Round, Fellow at Center for Innovation in Worker Organization at Rutgers University).

<sup>23</sup> In 2004, the U.S. General Accounting Office became the U.S. Government Accountability Office—maintaining the same initials (GAO)—following the enactment of the GAO Human Capital Reform Act of 2004, P.L. 108–271. See CONG. RESEARCH SERV., GAO: GOVERNMENT ACCOUNTABILITY OFFICE AND GENERAL ACCOUNTING OFFICE, at 1 (2008).

<sup>24</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-276, CHANGES NEEDED TO DETER VIOLATIONS OF FAIR LABOR STANDARDS ACT, at iii (1981).

<sup>25</sup> Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages, Hearing Before the Subcomm. on Worker Protections of the H. Comm. on Educ. and Lab., 117th Cong. (2022) (Statement of Karen Cacace, Labor Bureau Chief, New York State Office of the Attorney General, at 3).

harm of the violation.<sup>26</sup> Because an employee can only recover the federal minimum wage in an action under the FLSA, their back wages and equal damages are often less than the amount of actual back wages stolen from the employee, reducing the incentive to even bring a claim.<sup>27</sup> To illustrate, under current federal law, a worker earning \$15 per hour who is a victim of wage theft could only collect her back wages at the federal minimum wage rate of \$7.25 per hour. Combined with an award of an equal amount in liquidated damages, which is another \$7.25 per hour worked, the worker would recover a total of \$14.50 per hour in back wages, meaning she would still recover less than her full hourly wage. In practical terms, that means it can be more cost effective for a dishonest employer to fail to pay a worker her wages and get caught than to actually pay a worker the wages she is owed.

In his testimony at the May 11th Hearing, Mr. Swenson-Klatt shared his own frustration as a business owner who realized that the current penalties and damages for wage theft violations do little to deter bad actors:

[L]arge corporate chains were willing to encourage wage theft practices knowing that in nearly all states, the restitution was limited to the federal minimum wage. Because that wage is lower than most state levels, they would come out ahead even when they were caught and lost the battle.<sup>28</sup>

#### CURRENT FEDERAL LAW FAILS TO GUARANTEE WORKERS RIGHTS TO THEIR PAYSTUBS AND ACCESS TO THEIR PAY RECORDS

Under current law, there is no requirement that employers provide regular paystubs or earning statements to their workers. As a result, employees can work for employers for years and never fully understand their rate of pay, which deductions are being made from their pay, or whether they are being fully compensated for all their hours worked, including overtime. Also, although current law requires employers to keep payroll records, there is no provision for how many years such records should be maintained or if employees can have access to their records. Moreover, there are no civil monetary penalties for violating this recordkeeping provision. In his testimony at the May 11th Hearing, Mr. Swenson-Klatt shared that for honest employers, providing regular and accurate pay records “isn’t a burden, it’s simply a necessary task. Your [congressional] efforts to help define what that [records] should include is helpful for both employee and employer, not harmful.”<sup>29</sup> Unscrupulous employers, however, currently face no consequences if they provide no records at all to an employee.

Considering there are no penalties for recordkeeping violations and no requirements to provide employees with pay stubs, employers have little legal incentive to maintain accurate records. Adequate records are essential to determine whether employers are complying with the FLSA and if wages are being illegally with-

---

<sup>26</sup> 29 U.S.C. § 216(b).

<sup>27</sup> Daniel J. Galvin, *Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance*, 14 PERSPECTIVES ON POLITICS 324, 338 (2016).

<sup>28</sup> Statement of Daniel Swenson-Klatt, *supra* note 17 at 3.

<sup>29</sup> *Id.* at 4.

held.<sup>30</sup> Without adequate records, workers are unlikely to be able to prove wage theft claims in court.<sup>31</sup> Employers' recordkeeping violations can become their own best defense to a wage theft claim.<sup>32</sup>

#### MANDATORY ARBITRATION AND CLASS ACTION WAIVERS LIMIT WAGE THEFT VICTIMS' ACCESS TO JUSTICE

Under current law, employment contracts can include mandatory arbitration agreements and class action waivers as a condition of employment. The FLSA does not bar these sorts of waivers, which have a harmful impact on workers. For example, in 2019, Quincy Reeves, a janitor in Connecticut, attempted to bring a class action with his coworkers against his employer for unpaid wages. However, Mr. Reeves discovered he had waived his right to pursue a class action and had to utilize a closed-door arbitration process. Mr. Reeves accumulated nearly \$4,000 in arbitration fees, and when he disclosed he would be unable to pay these fees, largely in part due to his monthly salary of \$1,800, the assigned arbitrator closed his case with no resolution.<sup>33</sup>

As of 2019, nearly 18 million workers making less than \$13 per hour had a mandatory arbitration clause in their employment contract.<sup>34</sup> Of these workers, it is estimated that more than one-in-four were victims of wage theft—4.6 million workers—and less than 2% were likely to bring a claim for arbitration.<sup>35</sup> If the 4.52 million workers who were unlikely to bring a claim are owed an average of \$2,050 in total unpaid wages and damages, they will lose in aggregate an estimated \$9.27 billion in compensation each year.<sup>36</sup>

#### FEDERAL LEGISLATIVE ACTION IS NECESSARY TO ADDRESS THE WAGE THEFT CRISIS

Current federal law fails to fully protect the wages workers are owed and dishonest businesses who steal workers' wages are exploiting weaknesses in the law to gain an unfair advantage in the market. Federal legislation strengthening existing wage and hour protections and expanding every worker's right to information about his or her pay is critical to ensure every worker receives the pay he or she is owed and to hold bad employers accountable.

To achieve these goals, the *Wage Theft Prevention and Wage Recovery Act of 2022* will:

- require employers to provide periodic paper copy or digital (per employees' consent) pay stubs. Pay stubs will encompass

<sup>30</sup> GAO REPORT, *supra* note 25 at 12–13.

<sup>31</sup> *Id.* at 13, 17.

<sup>32</sup> *Id.* at 13, 17.

<sup>33</sup> Susan Antila, *Forced Arbitration Is Making It Harder for Low-Wage Workers to Seek Justice*, CAPITAL & MAIN, (May 2, 2022), <https://capitalandmain.com/how-forced-arbitration-is-making-it-harder-for-low-wage-workers-to-seek-justice>.

<sup>34</sup> HUGH BARAN & ELISABETH CAMPBELL, NAT'L EMP. L. PROJECT, FORCED ARBITRATION HELPED EMPLOYERS WHO COMMITTED WAGE THEFT POCKET \$9.2 BILLION IN 2019 FROM WORKERS IN LOW-PAID JOBS 1 (2021), <https://s27147.pcdn.co/wp-content/uploads/Data-Brief-Forced-Arbitration-Wage-Theft-Losses-June-2021.pdf>.

<sup>35</sup> Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C. L. REV. 679, 696–97 (2018).

<sup>36</sup> According to Fiscal Year 2019 estimates by the DOL, wage theft victims were owed \$1,025 in back wages, and under current law those workers would also be eligible for \$1,025 in liquidated damages, together totaling \$2,050 per worker. BARAN & CAMPBELL, *supra* note 34 at 5.

the range of pay rate, period, overtime, and deduction information required for employees to accurately verify their net pay;

- require employers to maintain pay stub records for 5 years and provide such records to employees within 21-days of an employee's request;
- establish new penalties for employers who violate record-keeping requirements: \$1,000 for an initial violation and \$5,000 for repeated or willful violations;
- establish a grant program at the DOL to educate workers about their rights under wage and hour laws, help employers comply with those laws, and provide assistance to employees in filing claims for wage and hour violations. This grant program is authorized at \$50 million per year for Fiscal Years 2023–2026;
- include triple damages for wage and hour violations and quadruple damages for employer retaliation;
- update maximum civil monetary penalties to \$22,030 for initial wage and hour violations, \$110,150 for repeated or willful wage and hour violations, \$12,340 for tipped wage violations, and \$100 per employee per each occurrence of the employer's failure to provide the employee proper pay stubs or disclosures;
- revise the FLSA so that workers are entitled to recover all wages promised to them in their employment contracts in a successful action against employers for back wages, rather than only back wages at the federal minimum wage rate;
- prohibit class action waivers and mandatory arbitration for wage theft claims;
- codify the rebuttable presumption established in common law that if employers are unable to produce payroll records, the employees' proffered payroll records are deemed accurate; and
- increase statute of limitation periods for FLSA claims from two years to four years for common violations and three years to five years for willful violations.

#### CONCLUSION

Wage theft is a rampant and insidious problem that costs workers billions of dollars a year and puts honest businesses at a competitive disadvantage as dishonest employers can boost profits by paying workers less than they are owed. The Wage Theft Act is a responsible solution that will help workers reclaim every dollar they are owed, more effectively deter bad actors from violating the law, and level the playing field for high-road employers. In the words of Mr. Esparza at the May 11th Hearing:

Congress must act so that Wage Theft Prevention and Wage Recovery Act is made law. Your actions to strengthening penalties on violators, improving workers ability to pursue wage theft claims, expand outreach to workers and businesses on the issues, and facilitate the collection of evidence to assist in enforcement can help a worker gain the wages they deserve and hopefully help deter these crimes in the future. Businesses that play by the rules will also benefit because the cheaters underbid them. Good em-

ployers should not be punished for following the law[.] Too many times fines are imposed and bad actors in the industry see them as, “just the price of doing business”. Without stronger enforcement, higher penalties, and education to workers we will never stop these practices. Workers deserve better in this country[.]<sup>37</sup>

For the foregoing reasons, Congress must act and pass the Wage Theft Act.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title*

This section specifies that the title of the bill may be cited as the *Wage Theft Prevention and Wage Recovery Act of 2022*.

#### TITLE I—AMENDMENTS TO THE FAIR LABOR STANDARDS ACT (FLSA) OF 1938

##### *Sec. 101. Requirements to provide certain disclosures, regular paystubs, and final payment*

This section requires employers to provide initial disclosures when employees are first hired and modification disclosures when employees’ job statuses change. Employers are required to issue regular pay stubs detailing all information relevant for an employee to independently verify that the employee’s pay is accurate. This information must include:

- whether the employee is classified as exempt from minimum wage and overtime requirements;
- total gross and net wages paid;
- the applicable pay period;
- the rate of pay, hours, overtime hours, and overtime rate applied;
- any additional compensation or deductions from pay; and
- additional information the Secretary reasonably requires.

This section requires the Secretary to prescribe model paystubs and disclosures and make them publicly available to employers.

This section also requires final payments be made to terminated employees within 14 days of termination or employers may owe additional compensation to the employees.

##### *Sec. 102. Right to full compensation*

This section establishes that employers will compensate employees at the rate specified in the employment contract, including the rate in collective bargaining agreements, although that rate may be higher than minimum wage.

##### *Sec. 103. Civil and criminal enforcement*

This section strikes the word “minimum” from the FLSA’s damages provisions to allow employees who have been harmed by a violation of the FLSA to seek the full amount of back wages owed as damages rather than use the minimum wage as a limit.

This section increases liquidated damages on violations of the FLSA’s wage and hour provisions from double damages to triple

---

<sup>37</sup> Statement of Francisco Esparza, *supra* note 15 at 3.

damages, and from triple to quadruple damages where employers retaliate against employees for filing an FLSA claim.

This section specifies that the right to bring an action—including a joint, class, or collective claim—cannot be waived as a condition of employment or by a pre-dispute arbitration agreement.

This section increases civil monetary penalties on repeated and willful violations of wage and hour laws from \$2,203 per violation to \$110,150 per affected employee and creates a maximum penalty of \$22,030 per employee for initial violations.

Additionally, this section provides that employers who violate the FLSA's tipped wage provisions will be subject to a civil monetary penalty of \$12,340, an increase from \$1,234.

This section also adds civil monetary penalties of \$50 (initial) and \$100 (repeated or willful) for each violation of pay stub or disclosure requirements as well as \$1,000 (initial) and \$5,000 (repeated or willful) for violating FLSA recordkeeping provisions.

Finally, this section clarifies that criminal penalties are to be assessed to the employer per employee harmed by the employer's violation of the FLSA. The Secretary also shall be allowed to refer an offending employer to the Department of Justice (DOJ) for violations of the FLSA recordkeeping, wage and hour, and/or retaliation provisions.

#### *Sec. 104. Recordkeeping*

This section establishes that employees have the right to inspect an employer's wage records within 21 days after employees make such a request. Employers are required to maintain wage records for a period of five years.

This section also adopts the common law rebuttable presumption established in *Anderson v. Mt. Clemens Pottery Co.*<sup>38</sup> Specifically, in a claim for back wages before a tribunal, if an employer's records are inadequate for establishing the amount or extent of work for which the employee should be compensated, there is a rebuttable presumption that the employee's own records and recollections are accurate, unless the employer can establish the employee's evidence is not reasonable.

### TITLE II—AMENDMENTS TO THE PORTAL-TO-PORTAL ACT OF 1947

#### *Sec. 201. Increasing and tolling statute of limitations*

This section amends the *Portal-to-Portal Act of 1947* to increase the statute of limitations to bring a claim for wage or hour violations from two years to four years as well as from three years to five years where the employers' actions are willful.

### TITLE III—WAGE THEFT PREVENTION AND WAGE RECOVERY GRANT PROGRAM

#### *Sec. 301. Definitions*

This section provides several definitions, including wage and hour, wage and hour violations, and terms used in the grant program established in this title.

---

<sup>38</sup>*Anderson, et al. v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946).

*Sec. 302. Wage theft prevention and wage recovery grant program*

This section establishes that the Secretary shall provide grants to eligible entities to assist employees and employers. Specifically, eligible entities shall support activities that include disseminating information and conducting outreach to educate employees about their rights under wage and hour laws, training for employers about their obligations under wage and hour laws, and aiding employees in filing claims for wage and hour violations.

*Sec. 303. Authorization of appropriations*

This section authorizes \$50,000,000 annually for Fiscal Years 2023–2026 to carry out the grant program established in section 302.

**TITLE IV—RELATION TO OTHER LAWS, REGULATIONS, AND EFFECTIVE DATE**

*Sec. 401. Relation to other laws*

This section specifies that the paystub and disclosure requirements shall not preempt or supersede any requirements under state or local law that are at least as comprehensive as the requirements under this Act. The Secretary shall provide assistance to employers operating in more than one state as may be necessary to ensure compliance.

*Sec. 402. Regulations*

This section establishes that no later than 18 months after the date of enactment, the Secretary shall promulgate regulations necessary to carry out the Act and the amendments made by the Act.

*Sec. 403. Effective date*

This section provides that the amendments made by the Act will take effect either 6 months after final regulations are promulgated by the Secretary under section 401 or 18 months after enactment, whichever comes first.

**EXPLANATION OF AMENDMENTS**

The amendments, including the amendment in the nature of a substitute, are explained in the descriptive portions of this report.

**APPLICATION OF LAW TO THE LEGISLATIVE BRANCH**

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H.R. 7701, as amended, applies to terms and conditions of employment within the legislative branch because one of the laws amended by H.R. 7701 (*Fair Labor Standards Act*) is included within the list of laws applicable to the legislative branch enumerated in section 102(a) of the *Congressional Accountability Act of 1995*.

**UNFUNDED MANDATE STATEMENT**

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), the Committee traditionally adopts as its own

the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 7701, as amended.

#### EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 7701 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

#### ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 7701:

Date: 05/18/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:1

Bill: H.R.7701

Amendment Number:2

Disposition: Defeated by a roll call vote of 19-27

Sponsor/Amendment: Keller / H7701\_R\_03

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)	X			Mr. WALBERG (MI)	X		
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)	X		
Mrs. HAYES (CT)	X			Mr. GOOD (VA)	X		
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X			Vacancy			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 19

Nos: 27

Not Voting: 5

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 05/18/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:2

Bill: H.R.7701

Amendment Number:3

Disposition: Defeated by a roll call vote of 19-27

Sponsor/Amendment: Good / H7701\_R\_01

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)	X		
Mr. SABLON (MP)	X			Mr. WALBERG (MI)	X		
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)	X		
Mrs. HAYES (CT)	X			Mr. GOOD (VA)	X		
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X			Vacancy			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 19

Nos: 27

Not Voting: 5

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 05/18/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:3

Bill: H.R.7701

Amendment Number:4

Disposition: Defeated by a roll call vote of 19-27

Sponsor/Amendment: Comer / H7701\_R\_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)	X		
Mr. COURNEY (CT)	X			Mr. THOMPSON (PA)	X		
Mr. SABLAM (MP)	X			Mr. WALBERG (MI)	X		
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)	X		
Mrs. HAYES (CT)	X			Mr. GOOD (VA)	X		
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X			Vacancy			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 19 Nos: 27 Not Voting: 5

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 05/18/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:4

Bill: H.R.7701

Amendment Number:5

Disposition: Defeated by a roll call vote of 17-27

Sponsor/Amendment: Miller-Meeks / H7701\_R\_04

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)			X
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)	X		
Mr. SABLAM (MP)	X			Mr. WALBERG (MI)	X		
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)	X		
Mrs. HAYES (CT)	X			Mr. GOOD (VA)	X		
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)			X
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X			Vacancy			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 17

Nos:27

Not Voting:7

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 5/18/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 5

Bill: 7701

Amendment Number: Motion

Disposition: Adopted by a Full Committee Roll Call vote 27-19

Sponsor/Amendment: Courtney motion to report H.R. 7701 to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLAR (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)				Ms. MILLER-MEEKS (IA)		X	
Ms. WILD (PA)	X			Mr. OWENS (UT)		X	
Mrs. MCBATH (GA)	X			Mr. GOOD (VA)		X	
Mrs. HAYES (CT)	X			Mrs. MCCLAIN (MI)		X	
Mr. LEVIN (MI)	X			Mrs. HARSHBARGER (TN)		X	
Ms. OMAR (MN)	X			Mrs. MILLER (IL)		X	
Ms. STEVENS (MI)	X			Mrs. SPARTZ (IN)		X	
Ms. LEGER FERNÁNDEZ (NM)	X			Mr. FITZGERALD (WI)		X	
Mr. JONES (NY)				Mr. CAWTHORN (NC)			
Ms. MANNING (NC)	X			Mrs. STEEL (CA)		X	
Mr. MRVAN (IN)	X			Mr. JACOBS (NY)		X	
Mr. BOWMAN (NY)	X			Vacancy			
Mrs. CHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X						
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 27

Nos: 19

Not Voting:

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

#### STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 7701 are to strengthen wage and hour protections for workers and law-abiding businesses under the *Fair Labor Standards Act* and the *Portal-to-Portal Act*.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 7701 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111-139 or the most recent Catalog of Federal Domestic Assistance.

#### HEARINGS

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee on Education and Labor's Subcommittee on Workforce Protections held a hearing on May 11, 2022, entitled “*Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages*,” which was used to consider H.R. 7701. The witnesses were: Ms. Karen Cacace, Labor Bureau Chief, New York State Office of the Attorney General, New York, NY; Mr. Francisco Esparza, Representative, United Brotherhood of Carpenters, Upper Marlboro, MD; Ms. Tammy McCutchen, Senior Affiliate, Resolution Economics, Washington, DC; and Mr. Daniel Swenson-Klatt, Owner, Butter Bakery Café, Minneapolis, MN. The Committee heard testimony on how stronger state wage and hour law provisions could serve as examples to improve the FLSA, the harmful impact the wage theft crisis is having on workers, and how honest businesses are left at a competitive disadvantage when unscrupulous employers do not pay workers what they are owed.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs

that would be incurred in carrying out H.R. 7701. However, Clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 7701, as amended.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 7701, as reported, are shown as follows:

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### **FAIR LABOR STANDARDS ACT OF 1938**

\* \* \* \* \*

#### ADMINISTRATION

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$20,000 a year.

(b) The Secretary of Labor may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Secretary may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d)(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years

and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 14(b).

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall

be construed to affect the right of an employee to bring an action [for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages] for unpaid wages, or unpaid overtime compensation, as well as interest and liquidated damages, under section 16(b) of this Act.

**SEC. 5. REQUIREMENTS TO PROVIDE CERTAIN DISCLOSURES, REGULAR PAYSTUBS, AND FINAL PAYMENTS.**

(a) **DISCLOSURES.—**

(1) **INITIAL DISCLOSURES.**—Not later than 15 days after the date on which an employer hires an employee who in any work-week is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, the employer of such employee shall provide such employee with an initial disclosure containing the information described in paragraph (3). Such initial disclosure shall be—

(A) provided as a written statement or, if the employee so chooses, as a digital document provided through electronic communication; and

(B) made available in the employee's primary language.

(2) **MODIFICATION DISCLOSURES.**—Not later than the earlier of 5 days after the date on which any of the information described in paragraph (3) changes with respect to an employee described in paragraph (1) or the date of the next paystub following the date on which such information changes, the employer of such employee shall provide the employee with a modification disclosure containing all the information described in paragraph (3).

(3) **INFORMATION.**—The information described in this paragraph shall include—

(A) the rate of pay and whether the employee is paid by the hour, shift, day, week, or job, or by salary, piece rate, commission, or other form of compensation;

(B)(i) an indication of whether the employee is being classified by the employer as an employee subject to the minimum wage requirements of section 6 or as an employee that is exempt from (or otherwise not subject to) such requirements as provided under section 3(m)(2), 6, 13, or 14, as well as the reason for the exemption; and

(ii) in the case that such employee is not classified as being an employee subject to such minimum wage requirements, an identification of the section described in clause (i) providing for such classification;

(C)(i) an indication of whether the employee is being classified by the employer as an employee subject to the overtime compensation requirements of section 7 or as an employee exempt from such requirements as provided under section 7 or 13; and

(ii) in the case that such employee is not classified as being an employee subject to such overtime compensation requirements, an identification of the section described in clause (i) providing for such classification;

(D) the name of the employer and any other name used by the employer to conduct business; and

(E) the physical address of and telephone number for the employer's main office or principal place of business, and

*a mailing address for such office or place of business if the mailing address is different than the physical address.*

(b) PAYSTUBS.—

(1) *IN GENERAL.*—*Every employer shall provide each employee of such employer who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, a paystub that corresponds to work performed by the employee during the applicable pay period and contains the information required under paragraph (3) in any form provided under paragraph (2).*

(2) *FORMS.*—*A paystub required under this subsection shall be a written statement and may be provided in any of the following forms:*

(A) *As a separate document accompanying any payment to an employee for work performed during the applicable pay period.*

(B) *In the case of an employee who receives paychecks from the employer, as a detachable statement accompanying each paycheck.*

(C) *As a digital document provided through electronic communication, subject to the employee affirmatively consenting to receive the paystubs in this form.*

(3) *CONTENTS.*—*Each paystub shall contain all of the following information:*

(A) *The name of the employee.*

(B) *Except in the case of an employee who is exclusively paid a salary and is exempt from the overtime requirements of section 7, the total number of hours worked by the employee, including the number of hours worked per workweek, during the applicable pay period.*

(C) *The total gross and net wages paid, and, except in the case of an employee who is exclusively paid a salary and is exempt from the overtime requirements of section 7, the rate of pay for each hour worked during the applicable pay period.*

(D) *In the case of an employee who is paid any salary, the amount of any salary paid during the applicable pay period.*

(E) *In the case of an employee employed at piece rates, the number of piece rate units earned, the applicable piece rates, and the total amount paid to the employee per workweek for the applicable pay period in accordance with such piece rates.*

(F) *The rate of pay per workweek of the employee during the applicable pay period and an explanation of the basis for such rate.*

(G) *The number of overtime hours per workweek worked by the employee during the applicable pay period and the compensation required under section 7 that is provided to the employee for such hours.*

(H) *Any additional compensation provided to the employee during the applicable pay period, with an explanation of each type of compensation, including any allow-*

*ances or reimbursements such as amounts related to meals, clothing, lodging, or any other item.*

*(I) Itemized deductions from the gross income of the employee during the applicable pay period, and an explanation for each deduction.*

*(J) The date that is the beginning of the applicable pay period and the date that is the end of such applicable pay period.*

*(K) The name of the employer and any other name used by the employer to conduct business.*

*(L) The name and phone number of a representative of the employer for contact purposes.*

*(M) Any additional information that the Secretary reasonably requires to be included through notice and comment rulemaking.*

*(c) MODEL DISCLOSURES AND PAY STUB.—The Secretary shall prescribe model disclosures and a model pay stub that may be used to satisfy the requirements of subsections (a) and (b), respectively. The Secretary shall make the model disclosures and the model pay stub publicly available to employers.*

*(d) FINAL PAYMENTS.—*

*(1) IN GENERAL.—Not later than 14 days after an individual described in paragraph (4) terminates employment with an employer (by action of the employer or the individual), or on the date on which such employer pays other employees for the pay period during which the individual so terminates such employment, whichever date is earlier, the employer shall provide the individual with a final payment, which includes all compensation due to such individual for all time worked and benefits incurred (including retirement, health, leave, fringe, and other benefits) by the individual as an employee for the employer.*

*(2) CONTINUING WAGES.—An employer who violates the requirement under paragraph (1) shall, for each day, not to exceed 30 days, of such violation provide the individual described in paragraph (4) with compensation at a rate that is equal to the regular rate of compensation, as determined under this Act, to which such individual was entitled when such individual was an employee of such employer.*

*(3) LIMITATION.—Notwithstanding paragraphs (1) and (2), an individual described in paragraph (4) shall not be entitled to the compensation described under paragraph (2) if the employer successfully demonstrates that—*

*(A) the employer made a good-faith effort to provide the final payment described in paragraph (1); and*

*(B) the individual refused or otherwise intentionally avoided receiving such final payment.*

*(4) INDIVIDUAL.—An individual described in this paragraph is an individual who was employed by the employer, and through such employment, in any workweek, was engaged in commerce or in the production of goods for commerce, or was employed in an enterprise engaged in commerce or in the production of goods for commerce.*

## MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary of Labor, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(4) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any work-

week is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality or production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employees which have been withheld in violation of this subsection shall be deemed to be unpaid [minimum] wages or unpaid overtime-compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e)(1) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more

than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or sub-contracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act constitute wages for the purpose of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

(g)(1) In lieu of the rate prescribed by subsection (a)(1), any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than \$4.25 an hour.

(2) In lieu of the rate prescribed by subsection (a)(1), the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board established pursuant to section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act, may designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after the date of enactment of such Act a wage which is not less than the wage described in paragraph (1). Notwithstanding the time period designated, such wage shall not continue in effect after such Board terminates in accordance with section 209 of such Act.

(3) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1) or (2).

(4) Any employer who violates this subsection shall be considered to have violated section 15(a)(3) (29 U.S.C. 215(a)(3)).

(5) This subsection shall only apply to an employee who has not attained the age of 20 years, except in the case of the wage applicable in Puerto Rico, 25 years, until such time as the Board described in paragraph (2) terminates in accordance with section 209 of the Act described in such paragraph.

\* \* \* \* \*

**SEC. 8. RIGHT TO FULL COMPENSATION.**

(a) *IN GENERAL.*—*In the case of an employment contract or other employment agreement, including a collective bargaining agreement, that specifies that an employer shall compensate an employee (who is described in subsection (b)) at a rate that is higher than the rate otherwise required under this Act, the employer shall com-*

*pensate such employee at the rate specified in such contract or other employment agreement.*

(b) *EMPLOYEE ENGAGED IN COMMERCE.*—*The requirement under subsection (a) shall apply with respect to any employee who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce.*

\* \* \* \* \*

#### [COURT REVIEW]

[SEC. 10. (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court of the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objective shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order. The Court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court of the payment to the employees affected by the order, in the event

such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.]

**INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK  
REGULATIONS**

SEC. 11. (a) The Secretary of Labor or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such period of time, and shall make such reports therefrom to the Secretary as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 7(p)(3) may not be required under this subsection to keep a record of the hours of the substitute work. *In the event that an employee requests an inspection of the records described in this subsection that pertain to such employee from the employer, orally or in writing, the employer shall provide the employee with a copy of the records for a period of up to 5 years prior to such request being made. Not later than 21 days after an employee requests such an inspection, the employer shall comply with the request.*

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administration relating to industrial homework are hereby continued in full force and effect.

## PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of [section 6 or section 7] section 6, 7, or 8, or in violation of any regulation or order of the Secretary of Labor issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of [section 6 or section 7] section 5, 6, 7, or 8, or any of the provisions of any regulation or order of the Secretary issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be *prima facie* evidence that such employee was engaged in the production of such goods.

*(c) In the event that an employer violates section 11(c) and any regulations issued pursuant to such section, resulting in a lack of a complete record of an employee's hours worked or wages owed, the employee's production of credible evidence and testimony regarding the amount or extent of the work for which the employee was not compensated in compliance with the requirements under this Act shall be sufficient to create a rebuttable presumption that the employee's records are accurate. Such presumption shall be rebutted only if the employer produces evidence of the precise amount or ex-*

*tent of work performed or evidence to show that the inference drawn from the employee's evidence is not reasonable.*

#### PENALTIES

SEC. 16. (a) **[Any person]** (1) *Any person* who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than **[\$10,000]** \$10,000 per each employee affected, or to imprisonment for not more than six months, or both. **[No person]** *Subject to paragraph (2), no person* shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(2)(A) *Notwithstanding any other provision of this Act, the Secretary shall refer any case involving a covered offender described in subparagraph (B) to the Department of Justice for prosecution.*

(B) *A covered offender described in this subparagraph is a person who willfully violates any of the following:*

- (i) *Section 11(c) by falsifying any records described in such section.*
- (ii) *Section 6, 7, or 8, relating to wages.*
- (iii) *Section 15(a)(3).*

(b) Any employer who violates the provisions of **[section 6 or section 7]** *section 6, 7, or 8 of this Act shall be liable to the employee or employees affected in the amount of their unpaid [minimum] wages, or the unpaid overtime compensation, as the case may be, [and in an additional equal amount as liquidated damages] the amount of any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the second sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation.* Any employer who violates the provisions of section 15(a)(3) of this Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3), including without limitation employment, reinstatement, promotion, and the payment of **[wages lost and an additional equal amount as liquidated damages]** *wages lost, including any unpaid wages or any unpaid overtime compensation, the amount of any interest on such wages lost accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to 3 times the amount of such wages lost.* Any employer who violates section 3(m)(2)(B) shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages. An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. **[No employees shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.]** The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to

bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which (1) restraint is sought of any further delay in the payment of unpaid [minimum] wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under [section 6 or section 7] section 6, 7, or 8 of this act by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 15(a)(3). *Notwithstanding chapter 1 of title 9, United States Code (commonly known as the "Federal Arbitration Act"), or any other law, the right to bring an action, including a joint, class, or collective claim, in court under this section cannot be waived by an employee as a condition of employment or in a pre-dispute arbitration agreement.*

(c) The Secretary is authorized to supervise the payment of the unpaid [minimum] wages or the unpaid overtime compensation owing to any employee or employees under [section 6 or 7] section 6, 7, or 8 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid [minimum] wages or unpaid overtime compensation [and an additional equal amount as liquidated damages], any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the third sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid [minimum] wages or overtime compensation [and an equal amount as liquidated damages], any interest on such unpaid wages or unpaid overtime compensation accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to (subject to the third sentence of this subsection) 2 times such amount of unpaid wages or unpaid overtime compensation. In the event that the employer violates section 15(a)(3), the Secretary may bring an action in any court of competent jurisdiction to recover the amount of any wages lost, including any unpaid wages or any unpaid overtime compensation, any interest on such wages lost accrued at the prevailing rate, an additional amount as liquidated damages that is equal to 3 times the amount of such wages lost, and any such legal or equitable relief as may be appropriate. The right provided by subsection (b) to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid [minimum] wages or unpaid overtime compensation under [sections 6 and 7] section 6, 7, or 8 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, di-

rectly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action. The authority and requirements described in this subsection shall apply with respect to a violation of section 3(m)(2)(B), as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages.

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone, or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a)(3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections 12 or 13(c), relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed—

- (i) \$11,000 for each employee who was the subject of such a violation; or
- (ii) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term "serious injury" means—

- (i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);
- (ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or
- (iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

[(2) Any person who repeatedly or willfully violates section 6 or 7, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation. Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed \$1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for

all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b).】

(2)(A) *Subject to subparagraph (B), any person who violates section 6, 7, or 8, relating to wages, shall be subject to a civil fine that is not to exceed \$22,030 per each employee affected for each initial violation of such section.*

(B) *Any person who repeatedly or willfully violates section 6, 7, or 8, relating to wages, shall be subject to a civil fine that is not to exceed \$110,150 per each employee affected for each such violation.*

(C) *Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed \$12,340 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, any interest on wages lost accrued at the prevailing rate, and an additional amount as liquidated damages that is equal to 2 times the amount of wages lost, as described in subsection (b).*

(3) *Any person who violates subsection (a) or (b) of section 5 shall—*

(A) *for the initial violation of such subsection, be subject to a civil fine that is not to exceed \$50 per each employee affected; and*

(B) *for each repeated or willful violation of such subsection, be subject to a civil fine that is not to exceed \$100 per each employee affected.*

(4) *Any person who violates section 11(c) shall—*

(A) *for the initial violation, be subject to a civil fine that is not to exceed \$1,000 per each employee affected; and*

(B) *for each repeated or willful violation, be subject to a civil fine that is not to exceed \$5,000 per each employee affected.*

【(3)】 (5) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary.

【(4)】 (6) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

【(5)】 (7) Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the

violations and assessing and collecting such penalties, in accordance with the provision of section 2 of the Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.

#### INJUNCTION PROCEEDINGS

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of [minimum] wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).

#### RELATION TO OTHER LAWS

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act. *The requirements of section 5 shall not preempt or supercede any requirement under State or local law that an employer disclose the rate, frequency, or classification of pay at any time during an individual's employ, or that an employer provide regular paystubs or earnings statements to employees, so long as such requirement is at least as comprehensive as the requirements described under such section.*

(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, and

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and

shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.

\* \* \* \* \*

## PORTAL-TO-PORTAL ACT OF 1947

\* \* \* \* \*

### PART IV—MISCELLANEOUS

\* \* \* \* \*

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid [minimum] wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—[may be commenced within two years] *may be commenced within 4 years* after the cause of action accrued, and every such action shall be forever barred [unless commenced within two years] *unless commenced within 4 years* after the cause of action accrued, except that a cause of action arising out of a willful violation [may be commenced within three years] *may be commenced within 5 years* after the cause of action accrued;

(b) if the cause of action accrued prior to the date of the enactment of this Act—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to the date of the enactment of this Act, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after the date of the enactment of this Act unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction[.]; and

(e) *with respect to the running of any statutory period of limitation described in this section, the running of such statutory period shall be deemed suspended during the period beginning on the date on which the Secretary of Labor notifies an em-*

*poyer of an initiation of an investigation or enforcement action and ending on the date on which the Secretary notifies the employer that the matter has been officially resolved by the Secretary.*

\* \* \* \* \*

## MINORITY VIEWS

### INTRODUCTION

All workers should be paid in full for their work, and Committee Republicans support enforcement of the *Fair Labor Standards Act of 1938* (FLSA or Act), which establishes minimum wage, overtime pay, and recordkeeping requirements. There are strong remedies in place for employers who pay workers less than the amount to which they are entitled under the Act. Employers who violate these standards, whether unintentionally or willfully and repeatedly, are subject to remedies that may include back pay, liquidated damages, and civil and criminal penalties. Committee Republicans are committed to increasing compliance with the Act and believe that clear and concise standards, combined with compliance assistance, will benefit both workers and employers.

Unfortunately, rather than treating employers as good-faith partners, Committee Democrats repeatedly greet job creators with open hostility and contempt. The FLSA is a complicated law, and even employers who are diligent in their efforts to ensure compliance with wage-and-hour standards can unintentionally violate the Act. Employers want to do right by their employees, who are their greatest asset. Despite this, Committee Democrats assume the worst of all employers and insist on advocating for one-size-fits-all mandates, inappropriately inserting the federal government into employers' day-to-day operations.

Against this backdrop, Committee Republicans reject H.R. 7701, the so-called *Wage Theft Prevention and Wage Recovery Act*. Simply put, the bill does little to protect the paychecks of American workers and will be detrimental to both employees and employers. H.R. 7701 will have a chilling impact on efforts to promote greater workplace flexibility and will severely limit the economic opportunities offered to individuals through independent contracting and the franchise model. This legislation will impede the Department of Labor (DOL) Wage and Hour Division's (WHD) ability to administer and enforce the FLSA, thereby delaying efforts to recover wages on behalf of workers. It will also bankrupt small businesses for unintentional or technical errors, create burdensome and duplicative mandates of questionable utility, and line the pockets of trial lawyers.

Congress should review and clarify requirements related to wage-and-hour laws to promote clear and simple rules that make it easier to comply with the FLSA, not more difficult. H.R. 7701 misses the mark completely in this respect. For these reasons, and as set forth more fully below, Committee Republicans are united in their strong opposition to H.R. 7701.

### *Punitive and Excessive Penalties*

Punitive and excessive penalties in H.R. 7701 completely disregard the serious compliance challenges the FLSA poses to employers, particularly small businesses. The bill's civil monetary penalties are excessive and disproportionate with technical or unintentional FLSA violations. For example, under H.R. 7701, an employer with no prior FLSA minimum wage or overtime violations is subject to a civil monetary penalty not to exceed \$22,030 per each employee affected, as compared to no civil monetary penalty under current law. Repeat and willful violations of these provisions are subject to a civil monetary penalty not to exceed \$110,150 per each employee affected for each violation, as compared to \$2,203 per violation under current law.<sup>1</sup> This punitive approach to FLSA enforcement, which fails to consider whether an employer has acted in good faith, is misguided.

This legislation also fails to provide protections for small businesses lacking large employers' legal and human resource infrastructures. H.R. 7701's increased penalties could bankrupt a small business for a mere technical error, even for a first FLSA violation. The National Federation of Independent Business sent a letter to the Committee explaining how the bill's increased penalties represent an existential threat to small businesses:

[C]onsider a small business that employs four people who work 42 hours a week at a wage rate of \$20 an hour. That employer, who does the payroll by hand, forgets to pay overtime one week. Under current law, the employer must pay back wages, which would total \$80, and up to \$10,000 in criminal penalties for a maximum liability of \$10,080. If H.R. 7701 were enacted, the employer would owe \$160 in back wages, a \$22,030 fine per employee, and \$10,000 criminal penalty per employee totaling \$128,280. These penalty amounts will undoubtedly put some small employers out of business.<sup>2</sup>

In addition to expanding unjustly civil and criminal penalties that could bankrupt small businesses, larger fines are unlikely to speed up the recovery of wages. In the hearing on H.R. 7701, Tammy McCutchen, former DOL Wage and Hour Administrator, explained how the bill could delay remedies owed to workers:

The increases proposed are very significant, even ridiculous, and I fear will be counter-productive of the goals of this bill. FLSA liquidated damages would increase from an amount equal to back wages to two or three times back wages. Penalties would increase by 900 to 4,900 percent or even higher—as the bill would require payment of penalties per employee rather than per violation. The bill would also extend the statute of limitations from two to four years for all violations and from three to five years for willful violations—longer than any state except for New York. If found in violation of the FLSA, employers faced

---

<sup>1</sup> 29 CFR § 578.3.

<sup>2</sup> Letter from Kevin Kuhlman, Vice President, Nat. Fed. of Indep. Bus., to Reps. Bobby Scott (D-VA) & Virginia Foxx (R-NC) (May 17, 2022) (on file).

with such massive damages and penalties, in addition to more years of back wages, will have only one way to react: litigate, litigate, litigate and litigate some more. Payment of back wages would be delayed for years. The plaintiffs' bar will collect more fees, but transitory low-wage workers may see nothing at all.<sup>3</sup>

Committee Democrats justify imposing such excessive penalties on employers by claiming it is cheaper to violate the law than to pay employees what they are owed.<sup>4</sup> This is a blatant misrepresentation of the remedies available to workers under the FLSA and state laws. Under the FLSA, employers who violate minimum wage or overtime requirements are liable for unpaid wages and an additional equal amount in liquidated damages unless the employer can prove to the court the action was in good faith and there were reasonable grounds to believe it was not a violation of the FLSA.<sup>5</sup> Depending on the violation, employers can incur even greater costs. Employers who repeatedly or willfully violate minimum wage and overtime provisions of the Act can be assessed civil fines of \$2,203 per violation. DOL can assess a civil monetary penalty of \$1,100 to employers who keep employees' tips.<sup>6</sup> Attorneys' fees and court costs can also be awarded to employees.<sup>7</sup>

Ultimately, H.R. 7701's increased penalties will primarily harm good-faith employers who try to comply with confusing and complex FLSA regulations and it will not help workers. Finally, it is worth noting that it is not workers who collect payments from these civil and criminal penalties: it is the Department of Labor.<sup>8</sup> This reality suggests that these punitive fines will incentivize the Labor Department to seek the highest penalties possible in every case, even for questionable violations.

#### *Significant and Unwarranted Mandates*

H.R. 7701 burdens employers with new onerous recordkeeping and informational mandates, resulting in unnecessary red tape and conflicting federal and state requirements. These burdens add to already costly and complex DOL regulations. To date, the Biden DOL's overall net regulatory costs totaled more than \$4 billion and added over 100 million hours of paperwork burden.<sup>9</sup>

H.R. 7701's pay stub and informational mandates are reminiscent of extreme requirements implemented by the states of New York and California and would be inappropriate for nationwide implementation. These mandates impose significant compliance burdens that increase costs to employers. Ms. McCutchen described the bill's pay stub and informational mandates as duplicative and likely to add confusion for employers, resulting in the plaintiffs' bar collecting more fees:

---

<sup>3</sup> Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab., 117th Cong. (2022) (statement of Tammy McCutchen, Resolution Econ., at 2).

<sup>4</sup> *Id.* (statement of Rep. Alma Adams (D-NC)).

<sup>5</sup> 29 U.S.C. §§ 216(b), 260.

<sup>6</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115–141, tit. XII, 132 Stat. 348 (2018).

<sup>7</sup> 29 U.S.C. § 216(c).

<sup>8</sup> 29 U.S.C. § 216(e).

<sup>9</sup> AM. ACTION FORUM, REGULATION RODEO, <https://regrodeo.com/?year%5B0%5D=&year%5B1%5D=2022&year%5B2%5D=2021&agency%5B0%5D=Labor>.

Every state has its own paystub disclosure requirements, ensuring employees already receive an earning statement that includes hours worked, pay rate, gross and net wages, deductions and more. An additional layer of regulation would not add to the worker protections already there under state and federal law. Plaintiffs' attorneys have made a lot of money from California class actions for minor violations of that state's paystub disclosure violations (for example, listing regular hours and overtime hours, but not adding them together to show the total hours). Perhaps the goal here is to make a federal case out of such minor violations, allowing the plaintiffs' bar to export California litigation to the rest of the country.

State laws also govern the frequency and timing of pay, including final pay: Some shorter than the 14-day standard proposed in the bill, and some longer. Having both federal and state laws on this topic would only lead to more complexity and confusion when employers try to figure out which law is more protective, the new FLSA provisions or the existing state law provisions.<sup>10</sup>

Not only are these mandates duplicative and burdensome, but they will result in fining employers who pay their employees in full but err in filling out bureaucratic forms. For example, an employer could face fines for technical errors on wage statements such as a mistake in an employer's name or address or wrong dates of the payroll period, even if all employees are paid correctly and no employee suffered any harm.

Workers and businesses would benefit from easy-to-understand wage-and-hours rules, not from impossible compliance burdens and red tape. Instead of simplifying the FLSA or assisting with compliance, H.R. 7701's onerous mandates will punish good-faith employers and provide plaintiffs' lawyers fertile ground to file frivolous lawsuits.

#### *Chilling Workplace Flexibility*

H.R. 7701's compliance burdens, monetary penalties, and litigation risks on job creators would have a chilling impact on independent contracting and business-to-business relationships like the franchise model. The risk of litigation and monetary penalties under H.R. 7701 for potential technical or disputed FLSA violations would cause companies to avoid these alternative business models.

Modern workers seek opportunities as independent contractors which allow them entrepreneurial freedom and flexibility. Companies also seek out independent contractors to fill workforce needs and find the right talent at the right time. Franchising creates a proven path for entrepreneurs to become their own boss. Undermining independent work and franchising opportunities would kill jobs that millions of hardworking Americans enjoy. A comprehensive study on the U.S. independent workforce found that 59 million Americans performed freelance work in 2021, representing more than one-third of the U.S. workforce. Not only do independent workers represent a large share of the workforce, but they contrib-

---

<sup>10</sup> McCutchen statement, *supra* note 3, at 3–4.

uted \$1.3 trillion in annual earnings to the U.S. economy.<sup>11</sup> Additionally, in 2021, the total output generated by franchise establishments was \$787.7 billion. Despite economic headwinds, franchising added a net 660,300 jobs in 2021.<sup>12</sup>

Reducing independent contractor opportunities would also take away individuals' right to earn a living as they see fit. A survey conducted by MBO Partners highlights why so many workers want to engage in independent contract work: two out of 3 full-time independent workers believe they are more secure than traditional workers; 87 percent say they happier working independently; and 78 percent say they are healthier working independently.<sup>13</sup>

H.R. 7701 threatens the livelihoods of millions of Americans who are independent contractors or work in the franchise industry through fear of failing to comply with burdensome mandates and excessive fines. This would be a sad reality for independent workers who say they are happier and healthier as independent contractors and entrepreneurs who found success through the franchise business model.

#### *Private Enforcement of the FLSA*

Section 302 of H.R. 7701 provides federal grants to certain private entities to police businesses on behalf of DOL. These grants are intended to assist in the enforcement of the FLSA, reduce violations, and assist employees in wage recovery.

However, it is improper for Congress to deputize private organizations to perform enforcement activities traditionally conducted by DOL. It is also highly inappropriate to delegate enforcement authority to private entities such as labor unions and employee advocacy organizations whose interests are antagonistic to the interests of those they are regulating. Enforcing the FLSA should be a government function conducted by disinterested state officials, not adversarial private entities with potential ulterior motives.

Another concern with Section 302 is that it could delay WHD investigations and the recovery of wages for workers. The U.S. Chamber of Commerce explained in a letter:

The bill's Grant Program would deputize advocates to help conduct investigations. This would eradicate the long tradition of employers voluntarily cooperating with agency investigations, producing documents, and welcoming investigators into their worksites. If the Department of Labor brings along unions and advocates, employers would likely stop cooperating and insist on search warrants and document subpoenas, in accordance with the Fourth Amendment. Again, more complexity, longer investigations, and

---

<sup>11</sup> Press Release, Upwork Study Finds 59 Million Americans Freelancing Amid Turbulent Labor Market (Dec. 8, 2021), <https://investors.upwork.com/news-releases/news-release-details/upwork-study-finds-59-million-americans-freelancing-amid>.

<sup>12</sup> INT'L FRANCHISE ASS'N, 2022 FRANCHISING ECONOMIC OUTLOOK, <https://www.franchise.org/sites/default/files/2022-02/2022%20Franchising%20Economic%20Outlook.pdf>.

<sup>13</sup> MBO PARTNERS, 11TH ANNUAL STATE OF INDEPENDENCE: THE GREAT REALIZATION, <https://www.mbppartners.com/state-of-independence/>.

more litigation will harm low-wage workers by delaying payment of wages.<sup>14</sup>

Further, the grant program could provide union organizers access to employers and industries they seek to unionize. As grant recipients, labor unions could be given authority to visit workplaces, conduct orientations with employees, and assist in the enforcement of the FLSA. This new policy would undoubtedly encourage labor unions to get involved in wage-and-hour enforcement in non-unionized facilities as a means of gaining access to employees, where the union normally would not have access. The grant program could become a taxpayer-funded union organizing tool.

#### *Republican Amendments*

During consideration of H.R. 7701, Committee Republicans offered several amendments that would have improved the bill. Unfortunately, the amendments were rejected by Committee Democrats on party-line votes.

Rep. Fred Keller (R-PA) offered an amendment to clarify, for the purposes of the new mandates in the bill, that the core factors in determining a worker's classification as an employee or independent contractor are the nature and degree of an individual's control over his or her work and the opportunity to earn profits or incur losses based on individual initiative. This amendment would have ensured that red tape would not interfere with the ability of workers and companies to enter into flexible work arrangements.

Rep. Bob Good (R-VA) offered an amendment that would exempt employers with fewer than 10 employees or annual gross volume of business under \$1,000,000 from the provisions in the bill increasing certain civil penalties. Many small business owners process their own payroll and do not have access to a team of lawyers to interpret the complex provisions in the FLSA. Unfortunately, Committee Democrats chose not to protect these small businesses owners from outrageously inflated civil monetary penalties and rejected the amendment.

Rep. James Comer (R-KY) offered an amendment to codify a joint employer standard that ensures employers who lack direct and immediate control over an individual's essential terms and conditions of employment are not subject to the disclosure and compensatory requirements in the bill. Rep. Comer's amendment would have codified a clear and reliable joint employer standard that protects the franchise business model and small business owners.

Rep. Mariannette Miller-Meeks (R-IA) offered an amendment to strike the underlying legislation and replace it with H.R. 5743, the *Ensuring Workers Get PAID Act*. This amendment would have reinstated and made permanent the Trump administration's Payroll Audit Independent Determination (PAID) program. The PAID program assisted job creators with FLSA compliance and ensured workers receive back wages in a timelier manner than traditional investigations. Unfortunately, Committee Democrats rejected this effort to make sure workers quickly recover back wages.

---

<sup>14</sup> Letter from Neil Bradley, Exec. Vice President, U.S. Chamber of Com., to Reps. Bobby Scott (D-VA) & Virginia Foxx (R-NC) (May 18, 2022) (on file).

## CONCLUSION

Changes in the American workforce expose the rigid and outdated nature of the FLSA. It is long-past time for reform. However, H.R. 7701 would compound the problems that exist in the current law rather than improve it. Instead of assisting employers with compliance and reducing outdated red tape, this legislation threatens to bankrupt small businesses for minor, technical, or unintentional FLSA violations; this is a troubling prospect, since small businesses have accounted for 66 percent of employment growth over the last 25 years.<sup>15</sup>

H.R. 7701 is not a win for workers, job creators, or the American economy. This Democrat bill makes it more difficult to operate a business and reduces opportunities for entrepreneurs and workers. Instead of imposing outrageous fines and mandates on employers, Congress should simplify the FLSA to ensure good-faith employers can easily operate within the law and pay workers in full and on time. The bill does nothing to meet the needs of workers, employers, or the 21st century economy. For these reasons, and those set forth above, we strongly oppose enactment of H.R. 7701 as reported by the Committee on Education and Labor.

VIRGINIA FOXX,  
*Ranking Member.*  
JOE WILSON.  
GLENN “GT” THOMPSON.  
TIM WALBERG.  
GLENN GROTHMAN.  
ELISE M. STEFANIK.  
RICK W. ALLEN.  
JIM BANKS.  
JAMES COMER.  
RUSS FULCHER.  
FRED KELLER.  
MARIANNETTE MILLER MEEKS,  
M.D.  
BURGESS OWENS.  
BOB GOOD.  
LISA C. MCCLAIN.  
DIANA HARSHBARGER.  
MARY E. MILLER.  
SCOTT FITZGERALD.  
MADISON CAWTHORN.  
CHRIS JACOBS.




---

<sup>15</sup> DANIEL WILMOTH, U.S. SMALL BUS. ADMIN OFF. OF ADVOC., SMALL BUSINESS JOB CREATION (Apr. 2022), <https://cdn.advocacy.sba.gov/wp-content/uploads/2022/04/22141927/Small-Business-Job-Creation-Fact-Sheet-Apr2022.pdf>.