

TESTIMONY OF
NANCY J. LEPPINK, DEPUTY WAGE AND HOUR ADMINISTRATOR
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

November 3, 2011

Good morning Chairman Walberg, Ranking Member Woolsey, and Members of the Subcommittee. Thank you for the invitation to testify at this hearing on the Fair Labor Standards Act, a law of critical importance to our nation's workers, businesses, and economy.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime compensation, recordkeeping, and child labor standards affecting employees in the private sector and in Federal, State, and local governments. As the agency charged with administering and enforcing the protections afforded by the Act, the Wage and Hour Division (WHD) is uniquely situated to attest to the public benefit of the Act and the necessity for strong enforcement of its provisions.

During these difficult economic times, it is important to remember what we faced as a nation when the FLSA was enacted in 1938. We were in the midst of the Great Depression.

Unemployment was at 19 percent. In response to those circumstances, far worse than we are experiencing now, Congress recognized the critical need to establish minimum wage, overtime compensation, and child labor standards for America's workers and the need to level the competitive playing field for their employers.

We all know, just as Congress did in 1938, that workers who work hard and play by the rules – responsibly fulfilling their roles as productive members of society – should earn enough to be able to support themselves and their families. The minimum wage helps meet that fundamental societal good by providing a wage floor that ensures workers receive fair compensation for their labor. Being paid at least the minimum wage makes the difference between living with the hope of sharing in the American dream or not. Similarly, the overtime compensation requirement is in part intended to guarantee that employees are fairly compensated for the burdens of working long hours for their employers. Together, the minimum wage and overtime compensation requirements help provide a basic level of economic security to our nation’s workers.

In addition to being necessary for the well-being of workers and their families, the FLSA’s protections are also essential to a healthy economy. The overtime compensation requirement spurs job creation. It is intended to spread available employment opportunities by encouraging employers to hire more workers instead of working a few employees long hours. This is particularly important in a time of 9.1 percent unemployment. Further, the FLSA’s protections allow workers to earn enough to purchase the goods and services necessary to support themselves and their families. That purchasing power in turn enables other workers to earn enough to purchase goods and services, thus sustaining the efficient functioning of our economy. Enforcement of these protections also eliminates an unfair competitive advantage unscrupulous employers gain from paying workers substandard wages in order to increase profits or underbid law-abiding competitors, helping to ensure a level playing field throughout the economy.

The Act's basic requirements of a minimum wage and overtime compensation are no less important today than they were in 1938. Every year, the WHD receives tens of thousands of complaints about FLSA violations and, with our current economic difficulties, the number of complaints has increased.¹ The complainants work in all industries and in almost all occupations. The violations run the gamut from employers paying significantly less than the minimum wage, to failing to pay overtime for hours worked over 40 in a workweek, to paying employees only in tips they receive from customers, to failing to make payroll or to pay workers at all, to making illegal deductions from wages, to misapplying exemptions to the Act's minimum wage and overtime protections. The impact these violations have on the welfare of the nation's workforce is significant. An employer's failure to pay his workers the minimum wage may mean a dishwasher cannot buy food for his or her family. An employer's improper classification of her employees as exempt from overtime compensation may mean a customer service representative is unable to spend time meeting the needs of her family because she is working 60 or more hours a week with no overtime pay just to keep her job.

The Act's child labor provisions were included because Congress recognized that, when young people work, they should do so in safe conditions that do not jeopardize their health, well-being, or educational opportunities. Unfortunately, even today there are still employers who continue to improperly hire children to work in hazardous conditions. The absence of a private right of action to address oppressive child labor makes this agency's role in safeguarding young workers all the more important. Even with current laws on the books, young workers are still killed or injured on the job, and one child injured on the job is one too many. In the last two years, WHD

¹ In FY 2008, the WHD received 21,558 FLSA complaints. That number rose to 26,376 in FY 2009 and 32,916 in FY 2010, and remained high at 28,595 in FY 2011.

has investigated cases involving the deaths of three young workers employed in two different grain storage facilities. In May 2009, a 17-year-old worker was killed at an Omaha meat rendering plant while operating a forklift in violation of the FLSA. Increasing compliance with the child labor provisions of the FLSA is a cornerstone of the agency's responsibilities.

In addition to the Fair Labor Standards Act, the Division is also charged with administering and enforcing a number of other federal labor and employment laws, including those covering family and medical leave, migrant farm work, the terms and conditions of employment of certain temporary non-immigrant workers, and the wages and benefits received by construction and service workers fulfilling government contracts. These critical protections provided by Congress cannot be fully realized in the absence of the effective enforcement of these laws by the Department.

The Division's longstanding mission is to promote and achieve compliance with employment standards to protect and enhance the welfare of the Nation's workforce. In an effort to rebuild the Division's enforcement capacity, WHD hired 300 new investigators beginning in late in FY 2009. The WHD now has more than 1,000 investigators, a 40% increase after a low of 731 in 2008, who are charged with enforcing these protections for over 130 million workers in 7.3 million workplaces. Secretary Solis made building the WHD into a modern, effective law enforcement agency a priority because of the magnitude of this charge -- a goal I was happy to take up when I arrived at the Department a little over two years ago. In addition to hiring 300 new investigators, we have made every effort to upgrade the technology and equipment our employees use in order to increase their effectiveness and efficiency. Equipment such as

Blackberries, laptops, and portable printers, for example, have given our investigators the ability to access and transmit information remotely and to engage in communications necessary to conduct an investigation in the field, without having to return to the office. Similarly, an investigator equipped with a wand scanner is able to readily copy documents and other evidence and to thus reduce the number of times the investigator may have to visit an employer's worksite during the course of an investigation.

In addition to ensuring that our investigators are equipped with the technology and equipment needed to be an effective and productive investigator, we are using all of the enforcement tools available under the law to make sure we are doing an effective job of enforcing the law. This means, for example, that we are fully utilizing all of the remedies provided by Congress. We are also making more transparent the results of our enforcement efforts, which will help to further achieve compliance both within and across industries by helping employers and employees understand their obligations and rights under the law.

We are increasingly sharing information about our investigations with law enforcement agencies, which is particularly important with respect to our efforts to combat the violations of our laws that occur because of employees who are misclassified as independent contractors or other non-employees. This sort of employee misclassification is a serious and, according to all available evidence, growing problem. When employers improperly classify their workers, it deprives those employees of many of the rights and benefits they are legally entitled to, including the minimum wage and overtime. Misclassification also has a significant negative impact on both federal and state revenues because, when employees are misclassified, it often means that

employers are not meeting their employment tax, including unemployment insurance, and workers compensation obligations. Misclassification also makes it difficult for law-abiding employers to compete – and no employer should have to choose between success and obeying the law.

For these reasons, the Administration is committed to working to end employee misclassification. The Department is a part of a multi-agency Misclassification Initiative that will strengthen and coordinate Federal and State efforts to enforce violations of the law that result from employee misclassification. As an important step in this Initiative, on September 19 of this year the Secretary signed a Memorandum of Understanding (MOU) with the IRS that will allow us to share information about our investigations with that agency so that it may follow up to make sure that the employers we have found in violation of our laws have paid the proper employment taxes. Similarly, the WHD also entered into MOUs with several state labor agencies, including agencies in Minnesota, Missouri, Utah, Washington, Illinois, Connecticut, Montana, Hawaii, Maryland, and Massachusetts. These MOUs with the states allow us to share information about our investigations and coordinate misclassification enforcement when appropriate. These agreements mean that all levels of government are working together to solve this critical problem.

One of the most important enforcement tools we have as an enforcement agency is our ability to conduct directed investigations. Too many employees are reluctant to complain, afraid that they will lose their jobs or suffer other retaliation if they do. Others are simply unaware of the law's protections and of their right to be paid the minimum wage and overtime compensation.

Furthermore, the WHD will never have the resources to address every complaint it receives, let alone investigate every employer who may not be complying with the law. For these reasons, the WHD is putting more of its resources into directed national, regional and local enforcement initiatives and, with a focus on industries with a prevalence of low wage and vulnerable workers, strategically targeting industries when available data and evidence tell us that there are significant levels of non-compliance in those industries. This is not a new strategy for the WHD, but we have certainly increased the share of our resources that we put toward it. Engaging in directed enforcement initiatives instead of relying so heavily on individual complaints the agency receives is a more efficient use of resources and has a greater impact on compliance both in general and in targeted industries.

In addition to its enforcement efforts, the WHD has always considered providing information to employers and employees about their responsibilities and their rights an important part of an effective strategy for achieving compliance. The Division's staff is available to provide assistance to employers, whether it is in person, over the phone, or by e-mail, to determine whether they are in compliance and what steps they should take to achieve compliance. In the past year, WHD has conducted nearly 900 outreach seminars, conferences, speeches, symposiums, panel discussions, and presentations where the target audience is geared to employers, employer representatives, human resource professionals, and/or employer associations. The WHD also makes guidance in many forms available to all employers and employees on our website (www.dol.gov/whd). This guidance includes fact sheets, field assistance bulletins, e-laws, and Administrator Interpretations. In whatever form the guidance takes, the WHD endeavors to find ways to assist employers and employees and to help them

understand how the laws the Division enforces apply to their situations. Assisting businesses in understanding and complying with their obligations under the FLSA is a critical strategy for ensuring that workers receive their proper wages from the beginning of their employment -- a goal I think we all share.

The results of all of these efforts speak volumes. In Fiscal Year 2011, the WHD collected \$224,844,870 in back wages for this nation's workers, which is the largest amount collected in a single fiscal year in the Division's history, exceeding the Fiscal Year 2003 amount of \$212 million, which included several very large multi-million dollar settlements, and the Fiscal Year 2007 amount of \$220 million, which included a \$32 million settlement with a large retailer. These back wages, collected on behalf of 275,472 workers, including almost 90,000 who had not been paid the minimum wage for all of the hours they had worked, demonstrate that the WHD has become a stronger, more effective law enforcement agency. These results are just one demonstration of the extraordinary capability and commitment of the WHD's employees, who endeavor every day to ensure our nation's workers receive the protections provided them under the FLSA. Furthermore, these back wages represent almost \$225 million dollars in the pockets of America's workers, a return of their rightfully earned wages that they will directly spend on goods and services, stimulating our economy and helping to create new jobs.

Our work, and its results, however, is about more than numbers. It is about the people we have helped. Because we focus on low wage and vulnerable workers, the amount we collect per individual may seem small but it can make all the difference for that worker and his or her family. For example, because of one of our investigations, a cable installer in Minnesota who

had been paid less than minimum wage by his employer and was facing foreclosure of his home was finally able to pay his mortgage when he received the \$3,000 in back wages he was owed. Because of one of our investigations in South Dakota, a construction worker's \$5,500 in back wages received meant that he and his wife were able to buy back the wedding rings they had to pawn in order to pay their rent to avoid eviction.

Our child labor enforcement also makes a real difference. In 2009, WHD found egregious child labor and other labor-related violations in the blueberry fields of New Jersey, North Carolina, and Michigan. In addition to assessing penalties, WHD took a comprehensive approach to ending the dangerous practices it had uncovered. Our staff met with employer associations, farm groups, community organizations, and state and local agencies to be sure that employers understood their obligations and that workers understood their rights. When WHD went back into the blueberry fields in 2010, there were no children working unlawfully in those fields. All of us at the Department are proud of our work to help American's children remain in safe working conditions.

These workers are a testament to the fact that the FLSA stands for how, as a nation, we value work and the responsibilities and opportunities that it affords our citizens. The Act's minimum wage and overtime laws codify the value of a fair day's pay for a fair day's work. It is through such laws that societies recognize the value and worth of human effort, and provide their members the means to support and nurture strong families. And it is an affirmation of these American values that the FLSA has stood the test of time, despite all of the changes that have

taken place over the past 73 years. Thank you again for the opportunity to testify today. I am happy to answer your questions.