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## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR  
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<http://help.senate.gov>

June 30, 2017

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

Dear Secretary Acosta:

As you know, the Department of Labor (DOL) previously published two important guidance documents that provided clarity to employers and workers about their rights and responsibilities under the Fair Labor Standards Act (FLSA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA). These guidance documents helped to enhance compliance regarding DOL's interpretation and approach to enforcing basic worker protections. As such, we would like to better understand why you decided to rescind these two pieces of guidance. Your withdrawal of guidance clarifying worker protections raises serious questions about the direction that you intend to take DOL, and we are deeply concerned that you will continue a pattern set by President Trump of prioritizing corporate financial interests at the expense of workers' safety and economic security.

Today, too many Americans are trapped in unstable, low-paying jobs. At the same time, our economy and labor markets have undergone dramatic changes. One of the biggest trends we have witnessed in the past 30 years is the increased reliance of large companies on contracted labor. More and more, businesses are turning to non-traditional, outsourced forms of employment in the form of subcontracting, staffing agencies, franchising, and other third-party sources in order to lower their labor costs. Well-intentioned employers and small businesses that want to create good jobs need guidance as they face competitive pressure. In this new economic reality, guidance from DOL is critical.

The two "Administrator's Interpretations" that were issued by the Wage and Hour Division (WHD) in 2015 and 2016 regarding joint employment and employee misclassification reflected comprehensive analysis of statutory provisions, regulations, and court decisions. They both spoke to critically important issues in today's workplace: 1) in what circumstances multiple employers qualify as joint employers of certain employees, and 2) in what circumstances workers qualify as employees instead of as independent contractors. These two guidance documents did not create new regulatory requirements or impose new costs on businesses, but instead provided workers and businesses alike with a clear understanding of their rights and responsibilities under these laws, ensuring that workers are not improperly deprived of their rights and that employers have all the information to fully follow the law.

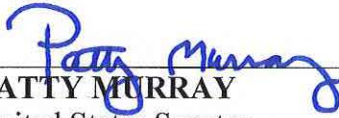
It was therefore disappointing when you announced that you were rescinding these two guidance documents, doing so without providing an explanation. As we understand, this action does not change the legal responsibilities of employers or the legal rights of workers under the FLSA and MSPA, but it does decrease clarity and provides less compliance assistance to employers and workers alike about their rights and responsibilities under federal law.

In order to understand why you rescinded these guidance documents, we request answers to the following questions:

1. Did you rescind the two guidance documents because you believe workers and businesses no longer need clarity on these important workers' rights issues?
2. Please describe the process DOL undertook to rescind the guidance. Who at DOL was involved in making the decision?
3. What factors did you consider when deciding to rescind the guidance? Please list them.
4. In response to Senator Murray's Question for the Record, in which she asked you before you were confirmed as Secretary of Labor whether you would keep in place the guidance on joint employment, you did not answer but instead responded that you "look[ed] forward to being briefed on Wage and Hour Division matters." Who briefed you on this matter? How many briefings did you receive before you were able to form a conclusion on the guidance? How many days after responding to her question did you conclude that you would, in fact, not be keeping this guidance in place?
5. In response to Senator Franken's Question for the Record, in which he asked you before you were confirmed as Secretary of Labor whether you would maintain the guidance on employee misclassification, you responded that it was important for DOL "to ensure that employers who want to do the right thing have clear compliance guidance from the Department," that "[e]mployers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly," and that you "look[ed] forward to being briefed on matters pertaining to the classification of employees..." Who briefed you on this matter? How many briefings did you receive before you were able to form a conclusion on this guidance? How many days after responding to Senator Franken's question did you conclude that you would, in fact, not be keeping this guidance in place?
6. Do you plan to issue new guidance on these important workers' rights matters?
7. Please provide copies of any communication between DOL and any private person or entity that discusses these guidance documents between January 23, 2017 and today.

We look forward to your answer no later than July 14, 2017. If you have questions about this request, please contact Joe Shantz or Carly Rush with my Health, Education, Labor, and Pensions Committee Staff at 202-224-0767.

Sincerely,



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**PATTY MURRAY**  
United States Senator  
Ranking Member, Senate Health,  
Education, Labor and Pensions Committee



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**AL FRANKEN**  
United States Senator