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Subcommittee on Workforce Protections

"Less Red Tape, More Opportunity: Unleashing American Workers and Job Creators"
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Chairman Mackenzie, Ranking Member Omar, and members of the Subcommittee, thank you for the opportunity to testify today. I am Austen Bannan, Employment Policy Fellow at Americans for Prosperity.

AFP is the premier grassroots organization advancing policy to ensure every American can pursue their version of the American dream. Across every state, millions of AFP grassroots supporters champion policies that will bring greater freedom and opportunity to their families and neighbors, and I work on their behalf every day to bring federal and state reforms to fruition. In my space, that means empowering workers with choice and opportunity to succeed in the 21st century. It means ensuring that Americans are free to chase opportunity instead of government permission.

Take for instance Marylin Costic, a Pennsylvanian who has worked for four decades as an independent contractor in the retail cosmetics industry. When her family relocated for her husband's job, she had to leave her own medical lab technician job but found self-employment as a new pathway. This allowed her to earn income while raising three children and taking care of her parents when they were sick.[1] AFP has worked hard to ensure states across the nation like Pennsylvania reject anti-worker employment tests like California has that are intended to cut off flexible work pathways and have led to reduced employment for self-employed workers and beyond.[2]

The National Labor Relations Act[3] turns 91 this year while the Fair Labor Standards Act[4] turns 88. Both were written for an economy where Americans often worked their full careers at one or very few employers, in fixed shifts, and in one career pathway. They were also enacted in an era where 1 in 3 workers were in manufacturing jobs, which supports less than 1 in 10 workers today.[5] The labor laws of that era didn't account for a labor market in which more than 70 million Americans now earn some or all of their income as self-employed workers such as independent contractors.[6]

Nor did they anticipate an era of rapid technology growth where Americans change jobs dozens of times including even their career pathways several times.

In my 2025 Institute for the American Worker report, *How to Empower Workers*,[7] I highlight how the skills required for success today often quickly shift as the knowledge economy grows and adapts to AI while traditional blue-collar jobs also become increasingly technical and even automated. Some leaders think a return to more government interventions in the private economy and adversarial collective bargaining will protect jobs, but the reality is that as more businesses compete for workers and consumers, American workers both need and want more flexibility to thrive in this dynamic landscape.

In other words, creating ample opportunity for workers to choose how they work is one of the most critical ways to protect workers and American families in our economy. The efforts by some leaders to double down on more top-down laws and regulations that eliminate worker choice and contract freedom undermines both workers and businesses across American communities.

Since President Trump took office, however, the Trump administration has shown a strong commitment to removing harmful and even unlawful labor regulations. The hearing today is a great opportunity to highlight regulatory reforms already underway as well as some of the future actions federal agencies and Congress can take to maximize opportunity for American families in the 21st century and beyond. Policies that allow workers to chase opportunity instead of government permission.

I'm going to highlight a few of the modern developments impacting American workers and businesses today including a shifting regulatory landscape.

The Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*,[8] which ended a long-time precedent of courts automatically deferring to agency decisions around ambiguous statutes, is an important part of the regulatory reforms we are seeing. President Trump addressed *Loper Bright* directly in his first days back in office. His Executive Order 14192,[9] issued eleven days into his second term, directed every agency to identify 10 existing regulations for repeal for every new one it wanted to issue. Then, an April 2025 memorandum[10] instructed agencies to move quickly against rules that *Loper Bright* and a related line of Supreme Court decisions had exposed as resting on thin statutory ground – including ones highlighted in the hearing today that undermine worker empowerment and economic growth.

Americans for Prosperity Foundation's Recasting Regulations Tracker helps to highlight how much regulatory reform is now occurring: As of late August 2026, there have been more than 1,800 regulatory actions across 57 federal agencies since *Loper Bright*, more than 140 of which invoke *Loper Bright* by name, and more than a dozen of those at the Department of Labor (DOL) specifically.[11]

Examples of DOL actions include:

Independent contractor classification. On February 27, 2026, DOL proposed largely restoring the commonsense test it first adopted in 2021, which focuses on two key factors of the longstanding economic realities test: the degree of control a business exercises over the work and the worker's own opportunity for profit or loss.[12] When finalized, that proposed rule will replace a 2024 Biden Administration rule that asked businesses to weigh six factors – control, investment, permanence of the relationship, skill and initiative, opportunity for profit or loss, and whether the work is "integral" to the business – with no factor carrying more weight than others under what DOL called a "totality-of-circumstances" test. This, in addition to new subfactors and guidance for the six factors[13] left workers and businesses in a cloud of uncertainty.

DOL within the proposed rule provides a telling example. A home-based contractor who sets her own hours, turns down work freely, and negotiates with several clients at once clearly satisfies the core factors of control and profit-or-loss that courts and DOL determinations have particularly relied upon. However, under the six-factor rule, her classification could still turn on whether her work was deemed "integral" to a client's business, or whether her modest investment looked small next to that client's — factors with no bearing on whether she's actually working for herself.

Restoring focus on the two primary factors that actually distinguish independence from employment will improve compliance and end a practice of treating self-employment pathways like they are a problem. This is exactly what workers want: A Bureau of Labor Statistics (BLS) survey from the Biden era found that less than 1 in 10 independent contractors would prefer a traditional job if given the choice.[14]

Joint employer status. On April 22, 2026, the Department proposed restoring the same kind of clarity to joint employer determinations under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Migrant and Seasonal Agricultural Worker Protection Act, citing *Loper Bright* directly in explaining how much weight its own guidance should carry with courts.[15] The proposal largely revives the sensible 2020 framework, weighing evidence of direct control being exerted by businesses rather than treating unused and theoretical control -- as subjectively determined by DOL -- as a way to force small businesses into legal liability with and control by larger businesses. That clarity matters enormously to the more than 820,000 franchise businesses employing nearly 9 million workers nationwide,[16] along with countless small businesses that operate as vendors and contractors to larger companies, all of whom have spent recent years navigating standards shifting back and forth across presidential administrations.

Union transparency. In the spirt of the highly bipartisan 1959 Labor Management Reporting and Disclosure Act (LMRDA), or Landrum-Griffin Act, that created reporting and other requirements for unions to curb corruption and anti-democratic actions, the Trump administration published a final rule on June 1, 2026 to update reporting requirements for unions.[17] This includes having the largest unions (over $40 million in annual revenues) file LM-2 "long forms" with additional reporting requirements such as highlighting foreign transactions and requiring unions to itemize more individual and aggregated receipts. On the other hand, smaller unions now have simplified reporting requirements. The Trump administration has highlighted how the changes are compatible with *Loper Bright*, and the reporting requirements will help ensure that current union members have a better understand of how union leaders spend the tens of billions of dollars in revenue they acquire out of workers' paychecks.

Overtime rules. In May 2026, DOL formally ended defense of the Biden Administration's 2024 overtime rule, which a federal court found unlawful shortly after the *Loper Bright* ruling for functionally eliminating the FLSA's duties test through an oversized salary increase.[18] Instead, the 2019 salary threshold from the first Trump administration is in place, restoring more certainty to overtime rules.[19]

Those actions are only part of a much broader effort. In its most recent Unified Agenda, DOL proposed nearly 150 regulatory actions,[20] and in July 2025 alone it began a process to rewrite or repeal 63 workplace rules it judged obsolete or beyond what Congress had actually authorized.[21]

Pro-Worker Reforms for Congress

As the Trump administration continues to pursue regulatory reform, Congress also has opportunities to advance reforms that make good policies permanent and drive even bigger reforms. Examples include:

H.R. 1319, the Modern Worker Empowerment Act,[22] would enact essentially the same control-and-opportunity test DOL has proposed, applying it to both FLSA and the National Labor Relations Act (NLRA) as administered by the National Labor Relations Board (NLRB).

H.R. 1320, the Modern Worker Security Act,[23] creates a safe harbor law for businesses that want to offer independent contractors portable benefits, from health coverage to retirement contributions, without providing benefits being used as a reason to categorize independent workers as employees against their will. Recently, 11 states have enacted related voluntary portable benefits laws in bipartisan fashion,[24] providing Congress a blueprint in working together to bring transformative access to affordable health care and other benefits to tens of millions of Americans. This legislation is an example of what is possible for Congress to act on right away.

H.R. 4366, the Save Local Business Act,[25] would enact a law similar to the DOL's proposed joint employer rule, giving the franchise and contracting small business entrepreneurs I mentioned a standard that remains settled regardless of who is president in the future. This joint employer standard would still provide agency oversight for evidence of actual control of workers by multiple businesses, but it would remove subjective, theoretical, and unutilized interpretations of control by agencies that threaten the livelihoods of millions of Americans including small business entrepreneurs.

H.R. 2870, the Working Families Flexibility Act,[26] sponsored by this Subcommittee's own Representative Miller, would give private-sector workers a choice that federal employees have had for decades: choosing whether overtime they work earns them one and a half times their pay or time and a half paid leave to use for future time off.

Best yet, the Employee Rights Act, H.R. 4154,[27] contains a full set of pro worker reforms advancing small business entrepreneurship, self-employment pathways, democratic rights for workers surrounding union policies, and more. The Employee Rights Act would unleash opportunity for workers that have been held back for far too long by dated labor law regimes.

While significant regulatory reforms are already in effect and being advanced by DOL and other agencies in the Trump administration, the next two plus years provide opportunity for additional regulatory reforms to advance. For instance, the Occupational Safety and Health Administration's (OSHA) 2024 walkaround rule,[28] which lets union leaders or other unqualified personnel interfere with safety inspection processes to advance unrelated agendas such as forcing union representation, could be withdrawn.

The deregulatory efforts by the Trump administration to improve economic opportunity while at the same time even reduce agency overreach long term have already created momentum. Combined with some of the legislative reforms I have highlighted, American workers would be able to genuinely chase opportunity instead of permission.

Notes

[1] How independent contracting regulations could hurt Pennsylvania workers. (Nov 2020)
[2] Liya Palagashvili, "Getting Worker Classification Right: Evidence, Tradeoffs, and the Future of Independent Work," public interest comment, Mercatus Center at George Mason University, April 28, 2026.
[3] National Labor Relations Act of 1935, 29 U.S.C. §§ 151–169.
[4] Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219.
[5] U.S. Bureau of Labor Statistics, "Employment by Major Industry Sector," accessed August 2026; Chelsea Follett, "The Changing Nature of Work," HumanProgress, accessed August 2026 (sources used for this comparison in Austen Bannan, How To Empower Workers (Institute for the American Worker, 2025), 1 nn.1–2).
[6] Carry, "How Many Freelancers Are in the US? [Statistics for 2026]," citing MBO Partners, "State of Independence 2025," accessed August 2026.
[7] Austen Bannan, How To Empower Workers (Institute for the American Worker, 2025).
[8] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).
[9] Exec. Order No. 14192, "Unleashing Prosperity Through Deregulation," 90 Fed. Reg. 9065 (Feb. 6, 2025).
[10] Presidential Memorandum, "Directing the Repeal of Unlawful Regulations" (Apr. 9, 2025), discussed in "Agencies to Use Good Cause Exception to Repeal Illegal Regulations," Snell & Wilmer, May 1, 2025.
[11] Americans for Prosperity Foundation, "Recasting Regulations Tracker," accessed late August 2026 (figures current as of access date; the tracker updates daily from the Federal Register).
[12] U.S. Department of Labor, "Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act," 91 Fed. Reg. 9932 (proposed Feb. 27, 2026).
[13] U.S. Department of Labor, "Employee or Independent Contractor Classification Under the Fair Labor Standards Act," 89 Fed. Reg. 1638 (Jan. 10, 2024), as discussed at U.S. Department of Labor, "Misclassification: Rulemaking," accessed August 2026.
[14] U.S. Bureau of Labor Statistics, "Contingent and Alternative Employment Arrangements" news release, accessed August 2026 (cited on this point in Bannan, How To Empower Workers, 13 n.86).
[15] U.S. Department of Labor, "Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act," 91 Fed. Reg. 21878 (proposed Apr. 23, 2026) (citing Loper Bright, 603 U.S. at 388, on the weight due the Department's interpretive guidance).
[16] International Franchise Association, "New Data Shows Franchising Continues to Exceed Growth Expectations," February 2024 (cited on this point in Bannan, How To Empower Workers, 9 n.55).
[17] U.S. Department of Labor, "Labor Organization Annual Financial Reports," 91 Fed. Reg. 32556 (final rule June 1, 2026; effective July 1, 2026).
[18] State of Texas v. U.S. Department of Labor, No. 4:24-CV-499-SDJ (E.D. Tex. Nov. 15, 2024).
[19] CUPA-HR, "DOL Ends Defense of Biden Overtime Rule in Court," May 5, 2026; see also Ogletree Deakins, "Trump Administration Rescinds 2024 DOL White Collar Overtime Expansion," May 14, 2026 (formal rescission effective May 15, 2026).
[20] EHS Today, "Administration Issues Regulatory Agenda," September 5, 2025.
[21] U.S. Department of Labor, "Secretary Chavez-DeRemer Unveils Aggressive Deregulatory Efforts in Push to Put the American Worker First," news release, July 1, 2025; Occupational Safety and Health Administration, "Deregulatory Rulemaking," accessed August 2026.
[22] H.R. 1319, Modern Worker Empowerment Act, 119th Cong. (2025).
[23] H.R. 1320, Modern Worker Security Act, 119th Cong. (2025).
[24] Mercatus Center at George Mason University, "Empowering American Workers," Portable Benefits Policy Hub, accessed August 2026 (state-by-state count of enacted and pending portable benefits legislation, updated on a rolling basis).
[25] H.R. 4366, Save Local Business Act, 119th Cong. (2025).
[26] H.R. 2870, Working Families Flexibility Act, 119th Cong. (2025).
[27] H.R. 4154, Employee Rights Act, 119th Cong. (2025).
[28] Occupational Safety and Health Administration, "Worker Walkaround Representative Designation Process," 89 Fed. Reg. 22558 (Apr. 1, 2024).