

Written Testimony of Matthew Paul Gizzo¹
Before the U.S. House of Representatives Committee on Education and Workforce
Subcommittee on Workforce Protections

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I. EXECUTIVE SUMMARY

Chairman Mackenzie, Ranking Member Omar, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today on “Building an AI-Ready America: Understanding AI’s Economic Impact on Workers and Employers.” My name is Matthew Paul Gizzo, and I am a Shareholder in the New York City and Dallas offices of the law firm Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and a Co-Chair of the Firm’s Technology Practice Group. For years, I have counseled employers of all sizes, from multi-national corporations to small businesses with fewer than fifty employees, on wage and hour compliance, workforce classification, and the adoption of emerging technologies in the workplace. I use artificial intelligence (AI) tools in my practice, and my clients increasingly use them in their operations. I have seen firsthand how these technologies are reshaping the employment landscape.

My testimony today proceeds from a straightforward premise: artificial intelligence is here, and it is evolving rapidly. While I acknowledge that AI presents potential pitfalls that merit serious attention, the weight of the evidence demonstrates that AI is, on the whole, a powerful and positive force for employers and employees alike. Accordingly, as I will explain in greater detail below, Congress should take a careful, deliberate approach to any regulation of AI in the workforce, particularly in the wage and hour context, so as not to stifle innovation or place unnecessary burdens on employers who are striving, in good faith, to comply with the law, even when doing so is increasingly challenging for the most sophisticated employers.

II. TAKING A STEP BACK: THE COMPLEXITY OF FEDERAL, STATE, AND LOCAL WAGE AND HOUR LAWS AND REGULATIONS PRESENT COMPLIANCE CHALLENGES FOR EMPLOYERS

Before turning to the role AI can play in advancing compliance, it is important to recognize just how difficult it is for employers to comply with the Fair Labor Standards Act (the “FLSA”) and the patchwork of state and local wage and hour laws that overlay the FLSA. The FLSA, codified at 29 U.S.C. § 201 *et seq.*, establishes federal standards for minimum wage, overtime pay, recordkeeping, and youth employment. The statute is enforced by the Wage and Hour Division of the U.S. Department of Labor, and in Fiscal Year 2025 alone, the Division recovered more than \$259 million in back wages tied to FLSA violations affecting nearly 177,000 workers.² However, those figures are not necessarily evidence that employers are acting in bad faith. On the contrary,

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² These statistics were published in a January 8, 2026 news release from the U.S. Department of Labor. ([https://www.dol.gov/newsroom/releases/whd/whd20260108.](https://www.dol.gov/newsroom/releases/whd/whd20260108))

those figures suggest that compliance with wage and hour laws is extraordinarily complex and challenging, and even well-intentioned employers routinely stumble.

There are a wide range of compliance obligations a single employer must navigate under the FLSA. *First*, an employer must determine whether each worker is an employee or an independent contractor—a determination governed by the “economic reality” test, which involves a multi-factor, fact-intensive analysis that can yield different outcomes depending on the jurisdiction in which the employer operates. *Second*, for each employee, an employer must determine whether the individual is exempt or non-exempt from the FLSA’s overtime requirements. The white-collar exemptions for executive, administrative, and professional employees require the employer to evaluate both whether the employee is paid on a salary basis at or above the applicable threshold—currently \$684 per week (\$35,568 annually) under federal law following the November 2024 vacatur of the Department of Labor’s proposed increase—and whether the employee’s actual duties satisfy the applicable duties test. Notably, employers must also consider state level application of these exemptions and the minimum salary threshold to ensure compliance at both the federal and state level. *Third*, an employer must accurately calculate overtime for all non-exempt employees, accounting for the regular rate of pay, which must include not just base hourly wages but also non-discretionary bonuses, commissions, shift differentials, and other forms of remuneration. *Fourth*, an employer must maintain detailed records for each non-exempt employee, including the employee’s full name, social security number, hours worked each day and each workweek, the basis on which wages are paid, and total earnings for each pay period—records that must be retained for two to three years depending on the category of document or information (and perhaps longer under applicable state or local law).

To illustrate the practical difficulty, consider a hypothetical mid-sized home healthcare company operating in three states. The company employs nurses, home health aides, and administrative staff. Some examples of FLSA compliance issues that it must address include: (i) determining whether its nurses qualify for the learned professional exemption; (ii) tracking the travel time of home health aides between client locations—time that may be compensable under the FLSA; and (iii) determining whether home health aides who work 24-hour shifts may be entitled to have sleep time excluded from hours worked if specific conditions are met under 29 C.F.R. § 785.22. And those are just some of the wage and hour issues presented under *the FLSA*, never mind the distinct and typically more stringent state and local requirements with which the company must also reconcile its wage and hour practices. Even for a single employer of modest size, the cumulative weight of these overlapping federal, state, and local obligations makes complete wage and hour compliance a formidable and ongoing challenge.

A. The Challenge Is Particularly Acute for Small Businesses.

These compliance burdens fall with disproportionate weight on small businesses. For example, the owner of a 30-employee landscaping company is simultaneously responsible for generating revenue, managing operations, hiring and retaining workers, and complying with a dense web of federal, state, and local employment regulations of which the FLSA is just one. That same employer must also comply with other federal laws, like Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Occupational Safety and Health Act, to name a few, as well as applicable state and local versions of those laws. Wage and hour compliance is just one legal domain in a regulatory environment that demands constant vigilance.

Critically, the vast majority of small businesses do not have a dedicated human resources or legal department, or even a single dedicated in-house attorney or HR professional, to manage these obligations, thereby compounding the risk of non-compliance. As a result, the owner or a general manager of the business is often responsible for the day-to-day operations of the business as well as legal compliance, including classifying workers, calculating overtime, and maintaining payroll records. These individuals are experts in running their businesses, not in parsing the intricacies of the salary basis test or determining whether an employee's waiting time is compensable because they are "engaged to wait" versus "waiting to be engaged," as just one example of the nuanced wage and hour questions countless small businesses face day-to-day. The consequences of a misstep are severe: back wages, liquidated damages, civil money penalties for willful or repeated violations, and attorneys' fees and costs, including the costs of defending against class and collective actions, which often present "bet the company" litigation for small- to medium-sized businesses.

B. The Patchwork of State and Local Laws Compounds the Problem.

Even large, sophisticated companies with dedicated human resources and legal departments experience significant challenges in complying with the increasingly complex patchwork of state and local wage and hour laws. While the federal FLSA sets a floor for wage and hour compliance, as noted above, many states have their own wage and hour laws with which employers must comply. More than thirty states and the District of Columbia have minimum wage rates higher than the federal rate of \$7.25 per hour. At least sixteen states maintain duties tests for white-collar exemptions that differ from the federal standard. For instance, California and Maine apply a "more than 50 percent" test, requiring that employees spend the majority of their time on exempt duties in order to qualify for an exemption, whereas under the federal standard it is merely a "primary duty" test. Beyond that, Colorado imposes additional constraints on the administrative exemption, Connecticut does not recognize the highly compensated employee exemption, Washington State ties its exempt salary threshold to a multiple of the state minimum wage, resulting in a weekly threshold more than double the federal threshold, and New York maintains different salary thresholds for New York City, the surrounding counties, and the rest of the state. Not to mention, while New York recognizes the FLSA overtime exemptions, not all such exemptions eliminate overtime pay entirely for New York employees; some exemptions only operate to reduce overtime pay to one-and-a-half times the minimum wage rate as opposed to one-and-a-half times the regular rate.

The result is that a national employer must simultaneously comply with multiple, overlapping, and sometimes conflicting regulatory regimes. A single employee classification decision that is correct under federal law may be incorrect under the law of the state in which the employee works or may be correct in one state but not another. Multistate employers must continuously monitor legislative and regulatory developments across every jurisdiction in which they operate and recalibrate pay practices and update recordkeeping systems accordingly—processes that are expensive, time-consuming, and fraught with legal risk.

III. COMPANIES GENERALLY STRIVE FOR COMPLIANCE

Against this backdrop, it is essential to recognize a fundamental truth that is too often overlooked in discussions of wage and hour enforcement: the overwhelming majority of employers

strive to comply with the law. In my experience counseling hundreds of employers from across the nation and a variety of industries, I have found that non-compliance is far more often the product of confusion, complexity, and honest mistakes than of willful disregard or intentional violation. Employers understand that complying with the FLSA and state wage and hour laws is not merely a legal obligation but a sound business practice. Fair pay attracts and retains talent, reduces costly turnover, and protects the company from the reputational and financial damage that accompanies wage and hour litigation.

The Department of Labor itself has recognized this dynamic. In July 2025, the Wage and Hour Division relaunched the Payroll Audit Independent Determination (PAID) program, a voluntary compliance initiative that allows employers to self-audit their pay practices, identify potential FLSA and FMLA violations, and work cooperatively with the DOL to make affected employees whole without litigation, liquidated damages, or civil penalties. The PAID program reflects an understanding, shared by the current Administration and by the employer community, that collaboration and compliance assistance are more effective than punitive enforcement alone. The initial run of the PAID program, launched in 2018, resulted in the recovery of \$11 million in back wages for workers. The program's relaunch and its expansion to cover FMLA violations is evidence that employers are willing to step forward and correct mistakes if given a viable path to do so.

IV. ARTIFICIAL INTELLIGENCE AIDS EMPLOYER COMPLIANCE

This brings me to the central point of my testimony: AI offers employers powerful tools to meet their wage and hour compliance obligations under federal, state, and local laws more accurately, more efficiently, and more consistently than has ever been possible before. Rather than viewing AI primarily through the lens of risk, AI-driven solutions can be maximized to close the compliance gap, particularly for small- and medium-sized businesses, in a manner that benefits employers and employees on a broad scale.

The compliance challenges described above—*i.e.*, classifying workers, tracking hours, calculating the regular rate of pay and overtime pay, maintaining records, and navigating multi-jurisdictional requirements—are precisely the kinds of problems that AI is well-suited to address. Consider the following examples of AI-powered products and capabilities that are transforming wage and hour compliance today:

Intelligent Classification Analysis. AI tools can assist employers in evaluating whether certain independent contractor engagements actually represent something more akin to an employment relationship or whether certain positions and roles satisfy the duties tests for white-collar exemptions by analyzing job descriptions, actual work activities, and compensation data against the legal standards applicable in each jurisdiction. While the final classification decision must remain with the employer and its legal counsel, AI can recognize potential misclassifications that might otherwise go undetected, particularly for small- to medium-sized businesses that do not have the same resources as large companies to conduct regular wage and hour audits.

Automated Time Tracking and Scheduling. AI-powered timekeeping systems can track employee hours worked across multiple locations, shifts, and pay periods with far greater precision

than manual methods. These systems can account for compensable travel time between worksites, automatically flag potential overtime situations before they occur, and ensure that meal and rest period requirements are satisfied. For a small business owner who previously relied on handwritten timesheets, a basic punch clock, or manual review of employee time records to identify premium pay, these tools represent a quantum leap in accuracy and efficiency.

Payroll Compliance and Overtime Calculation. AI-driven payroll platforms can automatically calculate the regular rate of pay, including non-discretionary bonuses, commissions, and other forms of compensation, and compute overtime premiums in compliance with both federal, state, and local requirements. These platforms can apply different overtime rules depending on the jurisdiction, eliminating manual reconciliation that has historically been a source of costly errors.

Generating Employment Documents and Notices. AI platforms can be used to identify notice and posting requirements in jurisdictions in which the employer operates and assist employers in preparing the required notices and postings, as well as other employment documents, such as handbooks and commission plans. Projects that previously required significant time and investment from dedicated experts can now be completed with fewer resources and on an expedited timetable thanks to AI.

Recordkeeping and Audit Readiness. AI systems can centralize and structure employee time and payroll records, making it significantly easier for employers to demonstrate compliance in the event of a DOL investigation or private litigation. AI-powered analytics can identify patterns and anomalies in payroll data, such as consistent underpayment of overtime or systematic misclassification of break time, enabling employers to detect and correct problems proactively and in real time.

Multi-Jurisdictional Compliance Monitoring. For employers operating across multiple jurisdictions, AI platforms can monitor changes in state and local laws and automatically update pay rules, salary thresholds, and classification criteria to reflect the most current legal requirements. This capability is particularly valuable in an environment where more than thirty states maintain wage and hour laws that differ from the federal standard in various ways.

There are numerous companies, ranging from established payroll providers to tech startups, implementing cost-effective AI solutions to address these myriad compliance issues. For example, some national payroll providers are embedding AI across their payroll, time and attendance, and HR platforms, drawing on data from over 42 million wage earners in 140 countries. These AI tools help detect and resolve payroll anomalies, such as incorrect time punches and approval gaps, saving an average of thirty minutes per issue and insuring workers are properly paid for all time worked. AI agents deployed by these payroll providers are identifying payroll and time-related variances and guiding businesses through corrections.

There are also various AI-powered worker classification tools that utilize research from civil employment suits and classification tests to analyze worker classification with astonishing accuracy—even taking into account jurisdiction-specific nuances. Such tools help companies

mitigate misclassification risk and ensure employees are properly classified and, in turn, properly paid.

In each of these applications, AI does not replace human judgment; it augments it. The employer remains responsible for compliance, and human oversight remains essential. But by automating routine calculations, flagging potential issues, and ensuring that payroll and human resource systems reflect current legal requirements, AI dramatically reduces the likelihood of the inadvertent errors that account for the vast majority of FLSA violations—positively impacting employers and employees alike.

V. AI-SUPPORTED COMPLIANCE IS A “WIN-WIN” FOR ALL STAKEHOLDERS

The compliance benefits of AI are not limited to employers. When employers classify workers correctly, calculate overtime accurately, and maintain complete records, employees receive the wages to which they are entitled promptly. Not only does this obviate the need for litigation or agency intervention, it also helps to ensure positive employee morale, production, and retention. AI-enabled compliance tools thus serve the interests of the very workers wage and hour laws were enacted to protect.

This is why Congress should take great care not to stifle innovation in this space. Overly prescriptive or burdensome regulation of AI in the employment context risks deterring their use by the very employers (and, in turn, employees) who would benefit most from these tools, particularly small businesses that lack the resources to navigate complex state and local requirements on top of the already formidable FLSA requirements.

The current Administration has articulated a clear and sound policy framework for AI. Executive Order 14179, “Removing Barriers to American Leadership in Artificial Intelligence,” signed on January 23, 2025, establishes a framework for sustaining and enhancing the United States’ global AI dominance and directs the development of a national AI Action Plan. The December 11, 2025 Executive Order, “Ensuring a National Policy Framework for Artificial Intelligence,” went further, emphasizing the need for a “minimally burdensome national standard” for AI and expressing concern that excessive state-by-state regulation creates a fragmented patchwork that makes compliance more challenging, particularly for startups and small businesses.

On March 20, 2026, the White House released its National Policy Framework for Artificial Intelligence, which recommends that Congress preempt state AI laws that impose undue burdens, support the development and deployment of AI through existing regulatory bodies and industry-led standards, and refrain from creating any new federal rulemaking body to regulate AI. The framework further recommends providing AI resources to small businesses through grants, tax incentives, and technical assistance programs.

These principles are directly applicable to the wage and hour context. Congress should encourage, and not impede, the development and adoption of AI tools that help employers comply with federal, state, and local wage and hour laws. The goal should be a regulatory environment that fosters responsible innovation while preserving the fundamental protections that wage and hour laws afford to American workers.

VI. THE NEW YORK MODEL NEGATIVELY IMPACTS EMPLOYER COMPLIANCE

Unfortunately, not all regulations have adopted a balanced approach. In an ill-advised rush to regulate AI in the employment context, some states have enacted or proposed legislation that places unnecessary burdens on employers while doing little to advance meaningful employee protections.

For example, New York City's Local Law 144, which took effect on July 5, 2023, requires employers and employment agencies that use automated employment decision tools ("AEDTs") to conduct annual independent bias audits, publish summaries of audit results, and provide advance notice to candidates and employees of the use of AEDTs. The law imposes civil penalties of \$500 to \$1,500 per violation, with no cap on total penalties, and authorizes a private right of action.

These measures are problematic for two principal reasons. *First*, they impose substantial compliance costs on employers, including the cost of annual bias audits, which can run \$5,000 to \$15,000 or more per year, extensive notice and disclosure obligations, and the creation of internal governance and appeals processes, all without providing clear evidence that these measures will meaningfully reduce discriminatory outcomes or improve worker welfare. For small- and medium-sized businesses in particular, these costs may be prohibitive, effectively deterring them from adopting AI tools that would otherwise improve their compliance with federal, state, and local wage and hour laws, which would, in turn, benefit employees.

Second, the requirement to publish audit results publicly serves as a deterrent from using AEDTs in New York City at all. Audit results can be easily misinterpreted or manipulated by opportunistic plaintiffs and attorneys to fashion potential disparate impact claims where none exist. Indeed, the New York City law has not resulted in a flood of AEDT litigation likely due to its deterrent effect.

Third, these jurisdiction-level efforts contribute to the very patchwork of inconsistent regulation that makes compliance so challenging. An employer operating in New York, California, Colorado, and Illinois, each of which has enacted or proposed distinct AI regulations with different requirements, different definitions, different audit standards, and different enforcement mechanisms, must navigate four separate compliance regimes in addition to its existing legal compliance obligations. This fragmented landscape increases costs, creates legal uncertainty, and discourages the responsible adoption of AI across the economy.

VII. FEDERAL REGULATION CAN SUPPORT EMPLOYER COMPLIANCE

While there are legitimate concerns about the use of AI in the workplace, including electronic monitoring and the importance of preserving human oversight in consequential employment decisions, the benefits of AI outweigh the risks, particularly in the wage and hour context. In fact, AI programs are better equipped to perform wage and hour calculations than humans. Thus, two core principles should guide federal legislation addressing the use of AI in the wage and hour context.

A. There Must Be Federal Preemption.

Any federal regulatory framework for AI in the employment context, and especially the wage and hour context, must include meaningful preemption of conflicting state and local laws. As I have detailed above, the proliferation of state- and local-level AI regulations, each with its own definitions, requirements, and enforcement mechanisms, is creating an untenable compliance environment for employers, particularly those operating across multiple jurisdictions. Federal preemption would establish a single, uniform standard that provides clarity and predictability for employers while ensuring that workers receive consistent protections regardless of where they are located.

This approach is consistent with the White House’s National Policy Framework for Artificial Intelligence, which recommends that Congress “preempt state AI laws that impose undue burdens to ensure a minimally burdensome national standard.” It is also consistent with the structural logic of the FLSA itself, which establishes a federal floor of worker protections that applies uniformly across the country.

B. Any Information-Gathering Program Should Follow the PAID Model: Voluntary and Incentivized.

If Congress seeks to gather information about how employers are using AI in the wage and hour context, it should design a program or mechanism for doing so that tracks the DOL’s PAID program: voluntary, collaborative, and structured to incentivize participation. The PAID program works because it offers employers a genuine benefit—*i.e.*, the ability to resolve compliance issues without litigation, liquidated damages, or civil monetary penalties—in exchange for transparency and cooperation. Employers participate because it is in their interest to do so, and employees benefit because they receive back wages and other remedies quickly and without the delay and expense of litigation.

By contrast, a mandatory reporting regime would impose additional administrative burdens on employers, generate resistance rather than cooperation, and risk creating a chilling effect on the adoption of AI tools that are genuinely beneficial to workers and employers alike. Congress should seek to apply the key aspects of the PAID program’s voluntary, incentive-based model to any future initiative involving employer use of AI.

VIII. CONCLUSION

AI is transforming the American workplace, and its potential to help employers comply with the FLSA and the complex web of state and local wage and hour laws is enormous. The tools available today include automated time tracking, intelligent classification analysis, payroll compliance engines, and multi-jurisdictional monitoring systems, all of which present a measurable difference in wage and hour compliance for employers and employees alike.

Congress has an opportunity to foster this innovation by adopting a regulatory approach that is careful, deliberate, and grounded in the realities of wage and hour compliance. That means resisting the temptation to impose prescriptive mandates that would stifle the development and use of beneficial AI applications. It means establishing a uniform federal standard that preempts the

growing patchwork of inconsistent state regulations. And it means designing any information-gathering initiatives on a voluntary, incentive-based model that encourages employer participation and cooperation.

The FLSA was enacted to protect American workers, and that purpose remains as vital today as it was in 1938. But protecting workers does not require constraining the very tools that can help employers meet their obligations to employees under the law. I urge the Subcommittee to pursue a balanced approach that promotes innovation, reduces compliance burdens, and ensures that the benefits of AI are shared by employers and employees alike.