

**Written Remarks of Dr. David Weil,
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**“Make It in America: What’s Next?” Second Hearing
PANEL TWO: New Economic Sectors**

Good afternoon. My name is Dr. David Weil. I am the Administrator of the Wage and Hour Division at the U.S. Department of Labor. Thank you for the opportunity to speak with you about how Congress can best help our nation’s workers and businesses compete and succeed in today’s digital economy.

At the Wage and Hour Division, our mission is to “Promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.” Yet the basic mission could not be simpler: Making sure working people in the U.S. receive a fair day’s pay for a fair day’s work. The protections provided by wage and hour laws are intended to provide a basic level of economic security to our nation’s workers and to allow them to earn enough wages to purchase goods and services to support themselves and their families – thereby, also supporting America’s businesses and economy.

Today I am here to speak about the “on-demand” or “gig” economy. We can all agree that there is currently rapid and evolving change in the nature and future of work. This results in part from technological advances and presents us with a time of enormous opportunity. At the same time, it requires our continued vigilance in protecting and enhancing the welfare of the nation’s workforce.

The Fissured Workplace

Technological advancements have been changing the nature of work for a long time. In the past twenty to thirty years they have resulted in a change I call the fissured workplace. As a result of increasing pressure from public and private capital markets, leading businesses in a growing spectrum of the economy focus on their core competencies that create value for customers and investors, like developing new products or creating distinctive brands. This in itself is a good thing and a basic part of economic development. However, that focus has often been accompanied by a decision to shed more and more of the production of goods and services to other businesses. This is done through a variety of practices: outsourcing, use of third party management companies, subcontracting, franchising, and the use of labor brokers. This shedding of activities transforms the nature of employment. Instead of a direct employer-employee relationship, employment has “fissured” apart into a network of contractors, subcontractors, or franchisees separating workers from lead companies in more and more sectors.

The hotel/motel industry is a perfect example of this modern day “fissuring.” When we walk into a well-known hotel chain, we assume that the people who greet us at the front desk, or the people who clean our rooms each day, or deliver our room service, are employees of that hotel (as their uniforms and name badges imply). This was certainly true for the vast majority of branded hotel properties in the 1960s and early 1970s. Now, however, less than 5% of branded hotels own, manage, or employ the workers in their properties. Instead, hotel workers are employed by separate management, janitorial, catering, and staffing companies. Rather than one company, there may be up to a dozen different business entities with their hand in employment.

On the one hand, fissuring can lead to greater efficiency and flexibility, which benefits consumers, as well as companies' bottom lines. It also, however, can result in lower wages, diminished benefits, and substandard safety conditions for the workers who help create a company's products or services. This is partly a result of enhanced competition at lower levels of fissured business organizations. Additionally, workers who traditionally would have been employees of a company may now work as independent contractors, thereby no longer receiving the protections of our workplace laws, or the benefits of an employment relationship. In fact, there are over 29 million workers in just five industries affected by the fissured workplace, including in the construction, hospitality, janitorial, personal care, and home health care industries. At the Department, we are constantly assessing the changing nature of work, including the challenges of the fissured workplace, and how workplace protections apply to changing employment norms.

Implications for the Digital Economy

In some instances the on-demand economy is a further development of the fissured workplace, as technology continues to make it easier and more cost effective for companies to focus on their core competencies and outsource work. The challenges and benefits contingent workers have faced can help inform us as we strive to take advantage of changes in the workplace while maintaining basic fundamental protections for workers.

This new economy is referred to as on-demand, sharing, gig, digital, or the 1099 economy. The lack of agreed-upon name itself highlights that there is an imprecision about what we are discussing when we reference the on-demand economy.

On one end of the spectrum we have digital marketplaces. Mirroring traditional physical marketplaces, these digital platforms connect sellers and buyers and allow for the exchange of goods. Moving along the spectrum, we increasingly see digital platforms that allow for the exchange of labor. It is becoming common for people and businesses to use digital platforms to solicit or contract either directly with a business, or another person, for services. These services may range from home repair, cleaning services, child and pet care, and food delivery, to individuals with specialized skill sets such as design, editing, and information technology. Finally, on the far end of the spectrum are digital platforms where companies are building business models around a distinctive set of labor services. Some (although certainly not all) of the digitally-enabled marketplaces and platforms are fissured --that is, their business models focus on a core competency and brand, and use technology to outsource most of the work.

Digital platforms have spurred remarkable innovation. Before becoming the Administrator of the Wage and Hour Division, I was a business professor for most of my career. I have taught thousands of MBA students and am the first to say that such innovation is fundamental to our economy and a great thing for consumers, businesses, investors, and potentially workers. There are fascinating apps and online services appearing on a seemingly daily basis. These may allow more workers enhanced flexibility, and this technology may help connect more workers needing jobs with employers needing specialized skills.

But we must also be careful about the challenges digitally enabled platforms may raise, as the labor protections that Congress put in place for workers remain just as critical today as when Congress enacted these laws. All of the digital platforms along this spectrum pose different kinds of labor standards questions. The fissured workplace in many instances leads to the erosion of workplace standards, whether it appears in a brick and mortar building or in a digital workplace. And where those workers should in fact be provided workplace

protections, it creates an issue for law-abiding businesses who are forced to compete on an un-level playing field.

Let me give you an example. Three members of the lighting crew are working at a concert event. One is a full-time employee of the event space. One is hired through a staffing agency that employs her. The third is hired through a digital platform that connects contingent workers with those needing their services for concert venues. The three individuals may receive different wages for the same work. Depending on whether they are classified as employees or classified as independent contractors, they also receive different benefits and protections for doing the same work. Only employees are entitled to receive, for example, minimum wage, overtime, family and medical leave, employer contributions to social security, in addition to other benefits, such as workers' compensation if they are injured on the job. Whether a worker is hired at a jobs fair, through a newspaper ad, or through a digital platform, we will have the same considerations in determining whether there is an employment relationship, and if so, whether the employer is complying with the basic, minimum, benefits of our labor laws.

Looking Ahead

In conclusion, new business models emerging in the fissured workplace present challenges while also opening new opportunities. At the Department of Labor, we will continue to use outreach, education, strategic enforcement, and collaboration with employers to make sure businesses create value while acknowledging their basic responsibilities to the workforce, as embodied in our bedrock labor standards. Our existing labor laws provide important protections for working people while at the same time giving businesses latitude for innovation, creativity, and flexibility—both in brick and mortar and digital workspaces. Thank you again for the opportunity to speak today. I look forward to your questions.