



April 23, 2026

Re: PHI Comments on NPRM: Employee or Independent Contractor Classification Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act (RIN 1235-AA46)

Thank you for the opportunity to respond to the Department of Labor’s (DOL) Notice of Proposed Rulemaking (NPRM) regarding the standard for determining who is an independent contractor under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act. **We strongly oppose this proposal and urge the Department to withdraw it. Our comments focus primarily on the harmful consequences of this proposed rule for home care workers, our nation’s largest workforce.**

About us. PHI is a national organization committed to strengthening the direct care workforce by producing robust research and analysis, leading federal and state advocacy initiatives, and designing groundbreaking workforce interventions and models. For more than 30 years, we have brought a 360-degree perspective on the long-term care sector to our evidence-informed strategies. **As the nation’s leading authority on the direct care workforce, PHI promotes quality direct care jobs as the foundation for quality care.**

PHI urges the Department to withdraw this proposal and instead pursue policies that reflect the economic reality of home care work.

This proposed rule, which would rescind the 2024 independent contractor classification rule (“2024 Rule”) and reinstate the 2021 rule, would make it meaningfully easier for home care agencies, among other employers, to misclassify workers as independent contractors.¹ In doing so, it would strip fundamental labor protections from workers who are among the most economically vulnerable in the U.S. economy, at a moment when home care workers and other direct care workers already face compounding threats from Medicaid cuts, immigration enforcement, and the erosion of workplace

protections (including home care workers' rights to minimum wage and overtime protections under FLSA).²

Background on home care workers and misclassification. Nearly 3.2 million home care workers provide essential personal care and assistance to older adults and people with disabilities across our country.³ Home care workers are primarily women, people of color, and immigrants who face structural inequities and heightened risks of discrimination in areas such as housing, education, employment, and health care.⁴ These workers are integral to the lives of the individuals and families they support, to the functioning of our long-term care system, and to our larger economy, yet they are underpaid and undervalued: median annual earnings for home care workers (primarily personal care aides and home health aides) are just \$22,429, 41 percent live in low-income households, and 59 percent rely on public assistance.⁵

Despite performing work that is, by definition, central to a home care agency's business, a significant share of home care workers are misclassified as independent contractors. A 2021 study found that nearly 13 percent of personal care aides nationally were classified as independent contractors—a figure that, while not representing misclassification in every case, illustrates the prevalence and risk of misclassification in this sector.⁶ Misclassification enforcement actions underscore how widespread this problem is: Maryland's Joint Enforcement Task Force on Workplace Fraud reported in January 2026 that state agencies had identified nearly 8,000 misclassified workers statewide and uncovered more than \$174 million in total unreported wages in 2025, with home care identified as one of the sectors where misclassification was particularly common.⁷ In 2025, the DOL itself found that two Louisiana home care companies had misclassified nearly 160 workers and failed to pay over \$422,000 in overtime wages.⁸ And in a recent case, California's attorney general secured a \$10 million judgment against an in-home caregiving company whose workers were sometimes paid as little as \$5 per hour for 24-hour shifts due to their misclassification as independent contractors.⁹

For workers, misclassification carries devastating financial consequences. Estimates show misclassification costs personal care and home health aides between \$7,229 and \$10,247 per worker per year in lost wages, benefits, and protections.¹⁰ In an occupation where median annual earnings are less than \$23,000, these losses represent a catastrophic share of a worker's total income.¹¹

The 2024 Rule better reflected the economic reality of home care work. The 2024 Rule represented an evidence-based approach to worker classification that better captured the economic reality of home care employment.¹² Under the 2024 Rule’s analysis, several considerations weigh strongly toward employee status for most home care workers, namely: the work they perform is integral to a home care agency’s core business; their relationship with the agency is often ongoing and continuous; they generally cannot set their own wages, which are often heavily influenced by Medicaid reimbursement rates set by state governments; and they depend on the agency for client referrals, scheduling, and operational support. Each of these factors better reflects the actual conditions under which most home care workers are employed, and their cumulative weight under the 2024 Rule correctly points toward employee status for most workers in the field. Conversely, the DOL’s NPRM would demote these considerations to secondary status that can be overridden by other factors (like scheduling flexibility), which will deprive many home care workers of the right to full employment status.

Misclassification harms workers, employers, and the long-term care system. The consequences of misclassification extend far beyond individual workers. When home care workers are deprived of employee rights under the FLSA and FMLA, the resulting financial insecurity drives turnover, reduces recruitment, and destabilizes the workforce that older adults and people with disabilities depend upon. The federal government projects a need to fill approximately 9.7 million direct care job openings over the next decade due to rising demand and high turnover.¹³ Policies that expand misclassification will exacerbate this workforce crisis by making direct care jobs even less secure and financially sustainable for workers.

Home care agencies that seek to support their workforce are also harmed by this rule. When some home care agencies choose to require workers to sign independent contractor agreements as a condition of employment, they can gain a competitive advantage by offloading costs and legal obligations onto the workers themselves. This dynamic—whereby high-road employers are placed at a competitive disadvantage—ultimately undermines the quality and stability of home care services for the millions of individuals and families who rely on them.

Conclusion. PHI strongly urges the Department to withdraw this NPRM. Most home care workers are not independent business owners—they are employees

performing work that is integral to their agencies' businesses, and they are dependent on those agencies for clients and income and vulnerable to exploitation when the law fails to recognize that reality. This proposed rule would entrench that exploitation by making it easier to misclassify workers in one of the nation's most in-demand, essential, and undervalued occupations.

PHI appreciates the opportunity to provide these comments and stands ready to support efforts to strengthen the direct care workforce.

Notes.

¹ U.S. Department of Labor (DOL), Wage and Hour Division. 2024. *Employee or Independent Contractor Classification Under the Fair Labor Standards Act*. 89 FR 1638; DOL, Wage and Hour Division. 2021. *Independent Contractor Status Under the Fair Labor Standards Act*. 86 FR 1168.

² PHI. 2025a. "PHI Comments on NPRM: Application of the Fair Labor Standards Act to Domestic Service." Newsroom (blog). PHI, September 3. <https://www.phinational.org/phi-comments-on-nprm-application-of-the-fair-labor-standards-act-to-domestic-service/>.

³ PHI. 2025b. *Direct Care Workers in the United States: Key Facts*. New York, NY: PHI. <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2025/>.

⁴ PHI, 2025b.

⁵ PHI, 2025b.

⁶ Kim, Joy Jeounghee. 2021. "Personal Care Aides as Household Employees and Independent Contractors: Estimating the Size and Job Characteristics of the Workforce." *Innovation in Aging* 6(1). doi:10.1093/geroni/igab049.

⁷ Maryland Department of Labor. 2026. "Maryland's multi-agency effort to tackle workplace fraud supports workers, employers, and taxpayers," press release, January 28, 2026.

<https://labor.maryland.gov/whatsnews/mdmultiagencyefforttotackleworkplacefraud.shtml>; Maryland Joint Enforcement Task Force on Workplace Fraud. 2026. *Annual Report 2025*.

<https://labor.maryland.gov/workplacefraudtaskforce/wpftfannrep2025.pdf>.

⁸ DOL, Wage and Hour Division. 2025. "Department of Labor recovers \$844K in back wages, damages for 158 workers illegally deprived of overtime wages by Louisiana home care providers," press release, January 16, 2025.

<https://www.dol.gov/newsroom/releases/whd/whd20250116-0>.

⁹ California Office of the Attorney General. 2025. "Attorney General Bonta Continues to Protect Workers' Rights: Secures \$10 Million Judgment Against Employers that Misclassified In-Home Care Workers," press release, October 2, 2025. <https://oag.ca.gov/news/press-releases/attorney-general-bonta-continues-protect-workers%E2%80%99-rights-secures-10-million>.

¹⁰ Economic Policy Institute. 2025. *Misclassifying Workers: An Updated Analysis of the Costs to Workers*. Washington, DC: EPI. <https://www.epi.org/publication/misclassifying-workers-2025-update/>.

¹¹ PHI, 2025b.

¹² DOL, Wage and Hour Division, 2024.

¹³ PHI, 2025b.