



COALITION FOR A
DEMOCRATIC WORKPLACE

July 13, 2020

Dear Chairwoman Lowey and Ranking Member Granger:

On behalf of the millions of American businesses concerned with the rights of their employees, the fragile economy, and the need for balance in federal regulation, the Coalition for a Democratic Workplace (CDW) writes to express our support for Representative Harris' amendment to the FY 2021 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill as well as our opposition to Section 408 of the bill prohibiting the use of funds for the National Labor Relations Board's (NLRB) "Representation-Case Procedures" Final Rule.

CDW is a broad-based coalition of hundreds of organizations united in opposition to the tenets of the so-called "Employee Free Choice Act" (EFCA) and alternatives that pose a similar threat to workers, businesses, and the American economy. Rep. Harris' amendment would strike provisions in the Appropriations Bill (Sections 113 and 407) that prohibit the use of funds by the NLRB and DOL for implementation and enforcement of their "joint employer" final rules. These provisions are extremely misguided, since the rules in question provided much needed stability and predictability to both employers and employees.

The final rules established that two or more entities could only be joint employers over the same group of employees if they exercised *direct and immediate control* over the employees' terms and conditions of employment. This bright line standard provides certainty to the employer community on their obligations under the law, which can be substantial when joint employer status is triggered.

If these sections were to go into effect, the NLRB and DOL would be forced to reinstate the previous controversial joint employer interpretations adopted by the agencies in 2015 and 2016, respectively, which allowed joint employer status to extend to entities that maintained *unexercised* or even just *potential control* over the employees' terms and conditions of employment. Under the NLRB's previous standard and DOL's 2016 interpretation, nearly every contractual relationship could potentially trigger joint employer status, from the franchise model to those between contractors and subcontractors.

The assurance provided by the final rules is vital, especially in today's world where large and small businesses alike have contractual relationships with dozens, hundreds, or even thousands of franchisees, vendors, and contractors. CDW strongly urges the Committee to approve Rep. Harris' amendment and protect these final rules.

Additionally, CDW strongly opposes Section 408 of the Appropriations Bill, which prohibits the use of funds by the NLRB to implement and enforce its "Representation-Case Procedures" Final Rule. This provision is ill-advised. The Board's Final Rule created a fairer, more efficient process for union representation elections and restored balance to the process. It ensures



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employees have the opportunity to receive balanced information on potential union representation and sufficient time to consider their options and ensures employers have the ability to effectively communicate with their employees during a union organizing drive.

CDW strongly urges the Committee to approve Rep. Harris' amendment and strike Section 408 from the Appropriations Bill. These changes will better protect the rights of workers and employers without unnecessarily destabilizing the economy and workplace relations. Thank you for your hard work on these issues, and we look forward to working with the Committee to protect the rights of American workers.

Sincerely,

The Coalition for a Democratic Workplace