

KEITH ELLISON

5TH DISTRICT, MINNESOTA

2263 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4755

2100 PLYMOUTH AVENUE NORTH
MINNEAPOLIS, MN 55411
(612) 522-1212

ellison.house.gov

TWITTER: @keithellison



CHIEF DEPUTY WHIP

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

SUBCOMMITTEE ON CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

The Honorable Alexander Acosta
Secretary
The Department of Labor
200 Constitution Ave N.W.
Washington, D.C. 20210

May 23, 2018

Dear Secretary Acosta:

I write to express my concern with the Department of Labor's (the Department) proposal, contained in the Spring Regulatory Agenda, to change labor protections for minors. Rolling back these regulations could jeopardize the safety of America's youth and lead to an increase in the rate of workplace injuries, or even death, for underage workers.

I support robust apprenticeship and job training programs that lead to living-wage jobs and offer a pathway into the middle class for young Americans. However, Congress and the Department have a responsibility to ensure worker safety, especially for children. The Fair Labor Standards Act (FLSA) establishes an 18-year minimum age for those nonagricultural occupations that the Secretary finds and declares to be particularly hazardous for 16-17-year-old minors, or detrimental to their health or wellbeing.¹ As you know, there are currently 17 Hazardous Orders which include restrictions for young workers in jobs like coal mining and forest fire fighting. Seven of these orders have an existing partial exemption to allow some intermittent training if the student learner is in an approved apprentice program as described in current regulations at 29 CFR 570.50, and has direct and close supervision of a qualified and experienced worker.

These partial exemptions require a high-level of oversight, because they are covering highly dangerous work. In fact, some of the jobs with partial exemptions are among the most dangerous in the United States. They include roofing, where workers die at some of the highest rates of any job in the nation, and meatpacking, where workers suffer the most serious injuries at rates three times the national average.²

Due to the inherent hazards associated with some occupations, Congress and the Department implemented child labor laws to mitigate many of these dangers, and these regulations have affected workplace injury and death for minors. Between 2009-2013, roughly 2 million youth ages 15 to 17 worked during the summer months, and 1.56 million were working during the

¹ "Wage Hour Division," last modified December, 2016, <https://www.dol.gov/whd/regs/compliance/whdfs43.htm>

² "National Census of Fatal Occupational Injuries in 2016," last modified December 19th, 2017, <https://www.bls.gov/news.release/pdf/cfoi.pdf>.

academic year.³ However, due to physical and psychosocial factors, young workers have a higher incidence of work-related injuries. Minors do not have fully developed decision-making skills, which can lead to risk-taking on the job. For some teenagers, traditional safety equipment may not fit appropriately, nor are they able to physically operate machinery, which can lead to errors and injury.⁴ According to NIOSH, higher rates of injury on the job for youth are also likely due to lack of work experience, oversight and workplace safety training.⁵

Fortunately, fatal and serious work-related injuries are largely preventable with appropriate regulation and enforcement. We have seen a decline in minors' work-related injuries, due in large part to our workplace safety laws.⁶ In 2015 and 2016, there were an average of 27 teenage work deaths a year, while there were 72.5 teen deaths in 1999 and 2000.⁷ Yet, despite these gains in workplace safety for youth, we still have significant room for improvement. In 2015, the incident rate for non-fatal job-related injuries for workers between the ages of 16 and 19 was 110.5 per 10,000 full-time employees compared to 98.9 injuries per 10,000 full-time employees for workers between the ages of 20 and 24.⁸ Given this data, expanding exemptions for hazardous jobs--especially without adequate oversight--will undoubtedly reverse the progress we have made over the last two decades to ensure our young people live safe and healthy lives.

As such, in order to best understand how the Department intends to balance job opportunities with the level of workplace safety necessary to protect minors, I request you reply to the following questions no later than June 6, 2018.

- 1) As the Department proceeds forward with rulemaking to change or update any of the Hazardous Orders or the partial exemptions, have they requested that NIOSH first do an evaluation of the risks to workers 16 and 17 in these jobs? In 2011, when the DOL was asked to revisit the prohibition on young workers using patient lifting devices in nursing home, the agency reached out to NIOSH. The agency requested that NIOSH study the particular risks to 16-17-year old's operating and assisting in the operation of patient lifting devices, to assist the Wage and Hour Division in its review of what, if any tasks, 16-17-year-olds could safely perform.⁹ Please provide copies of all emails and other correspondence with NIOSH, as well

³ KR Perritt, KJ Hendricks, and EM Goldcamp, "Young Worker Injury Deaths: A Historical Summary of Surveillance and Investigative Findings," *Department of Health and Human Services* (2017); accessed May 14th, 2017, <https://www.cdc.gov/niosh/docs/2017-168/pdfs/2017-168.pdf>

⁴ KR Perritt, KJ Hendricks, and EM Goldcamp, "Young Worker Injury Deaths: A Historical Summary of Surveillance and Investigative Findings," *Department of Health and Human Services* (2017); accessed May 14th, 2017, <https://www.cdc.gov/niosh/docs/2017-168/pdfs/2017-168.pdf>

⁵ "Young Worker Safety and Health," last modified August 29th, 2017, <https://www.cdc.gov/niosh/topics/youth/>.

⁶ "Work-related deaths among youth: Understanding the contribution of US child labor violations," last modified June 27th, 2016, <https://www.ncbi.nlm.nih.gov/pubmed/27345725>.

⁷ "How many child workers die in the work place in the US each year?" last modified May 7th, 2018, <http://stopchildlabor.org/?cat=66>.

⁸ "Young Worker Safety and Health," last modified August 29th, 2017, <https://www.cdc.gov/niosh/topics/youth/>.

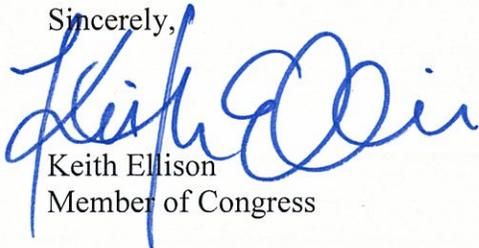
⁹ "Wage Hour Division," last modified July, 2013, https://www.dol.gov/whd/FieldBulletins/fab2011_3.htm

as any reports or memos or letters received from NIOSH, as a result of any DOL requests to NIOSH regarding any proposed or possible changes or updates of the Hazardous Orders or partial exemptions as part of this rulemaking effort, or as preparation for this rulemaking.

- 2) Please detail the agency requests the Department has received from industry groups or any other party to change or modify the Hazardous Order apprentice exemptions and any studies or evaluations the Agency or other agencies have done to evaluate the risks to 16-17-year olds in these occupations.
- 3) How does the Department currently ensure there is close and constant supervision of minors who may be permitted to work in hazardous occupations? Please cite specific policies, procedures and regulations you intend to implement to ensure the proper oversight necessary to keep minors safe.
- 4) According to a Bloomberg report,¹⁰ the Department aims to eliminate what you believe to be burdensome government regulations with “industry standards.” Please detail what constitutes industry standards. Are industry standards as protective or more protective than current regulations and laws enforced by the Department? Please cite all studies and evidence you used to come to this conclusion.
- 5) Which outside organizations, corporations, or individuals did you meet with prior to drafting the Spring Regulatory Agenda? Please provide copies of emails, and any other communications related to this decision.
- 6) Who in the White House or other agencies was involved in the creation of this proposal? Please include all email correspondence related to the drafting of this document.

Thank you for your time and attention to this matter. If you have questions, please contact Abby Schanfield on my staff. I look forward to hearing from you by June 6, 2018.

Sincerely,



Keith Ellison
Member of Congress

¹⁰ “Trump Administration Wants to Train Teens in ‘Hazardous’ Jobs,” last modified May 8th, 2018, <https://news.bloomberglaw.com/daily-labor-report/trump-administration-wants-to-train-teens-in-hazardous-jobs>.