

Honorable Joseph R. Biden, Jr.
President of the United States

Honorable Martin J. Walsh
Secretary of Labor

December 12, 2022

Re: Comments Regarding Employee or Independent Contractor Classification RIN 1235-AA43

Submitted Electronically at Regulations.Gov: <http://www.regulations.gov/commenton/WHD-2022-0003-0001>

Dear President Biden and Secretary Walsh:

My name is Renee VanHeel. My husband and I are owners of Pay It Forward Processing, a business that provides credit card processing services for small businesses.

I am leery about submitting this comment for fear that it will upset the U.S. Department of Labor and prompt an audit of my business. However, my fear is outweighed by the desire to speak out and educate your teams of government employees about the harm your proposal will do to small businesses like mine and to the independent contractors I work with.

We recently fled from California to Arizona because of what California did with their AB5 law. Our business model no longer fit into their parameters. All the elected officials could tell us was, "if you want to keep your current business model you will need to move out of state."

The Department of Labor's proposed federal regulation creates the same types of problems we experienced in California. It brings us back to the same rules and regulations that made it impossible for us to operate our business model that we had for 20 years in California.

I want you to know I am not against having employees. Our office staff in California were all employees. However, my business model relies on independent contractors to market and sell the value of our services to prospective clients.

That group of sole proprietors ,who make up an amazing sales team, have been your typical, legitimate independent contractors, by their choice. It continues to be important to me that before arrangements are agreed to and contracts are signed those independent business owners understand the arrangement. The independent contractors that make up my company's sales team continue to want the flexibility inherent in being their own bosses, to operate their businesses where and when they want to, on their time schedules, not mine.

- One of the independent contractors who worked with my business in California had a daughter with stage 3 cancer – so flexibility to bring her to her chemo treatments and help with the grand kids was extremely important to her.

- Another had a full-time job, with a fixed salary. He started his own business and became an independent contractor that worked with me as part of our sales team to earn extra money for his kid's college with the goal of building his sole proprietorship into something that would allow him to leave his 9-5 job.
- Another chose to work as an independent contractor because the business he worked for wasn't making enough money to make ends meet. His wife lost her job, and they needed the income for their kid in college.

This is only three people I've had personal experiences with. There are millions who have their own circumstances and stories as to why they want and need to have the ability to choose to be an independent contractor.

This regulation, its components and how it operates as it is proposed will take that flexibility out of people's lives. My business model works, in part, because of our reliance on independent contractors to operate as a sales team.

I consider my business unique, as most small business owners do. Pay It Forward Processing is based on servant leadership. We provide credit card swipe services, and a portion of every swipe goes to a charity of the proprietor's choice. Giving back and doing good is part of why many small business owners like me put in the long hours and long weeks, months, and years. We can compete with larger competitors, in part, because of our charitable mission and purpose. We are also able to compete because of our ability to string together 1099-businesses to quickly scale and more efficiently meet our clients' changing needs and the evolving marketplace.

Many small businesses leverage use of 1099-businesses to remain flexible themselves and to meet client demands quickly and efficiently. Adding confusion to the status of independent contractors will jeopardize my business model and the operations of millions of other small businesses that enjoy the ability to compete with larger businesses because of how we utilize independent contractors.

Reading your proposed regulation could lead an auditor to conclude that I must classify the independent contractors as employees. For some reason, the proposal only calculates such a change would cost me \$25.00. That is absurd. Setting up payroll systems, a benefits plan to administer health care, retirement savings, scheduling, employee manuals, and all the administrative workforce costs will obviously raise the costs for me to operate. Those costs would make it impossible to keep our costs and pricing competitive. Since I would not be able to raise prices at a rate to cover those increased costs, my business would not survive because I could not compete with the large business competitors in the market.

My argument that I cannot bring independent contractors on as employees because of the costs associated with payroll, scheduling, management, healthcare, and other benefits may be precisely why Department of Labor is proposing this regulation and why Department of Labor has structured the proposal as biased towards classifying workers as employees during audits that examine worker classification. However, the Department of Labor is wrong in assuming that is what independent contractors and sole proprietors want.

I participated in an open Zoom meeting with small business stakeholders on this proposed regulation last month sponsored by the U.S. Small Business Administration's (SBA) Office of Advocacy. I was moved by the stories told by business owners on the Zoom call who were shocked that the Department of Labor would discourage large corporations' use of independent contractors. They explained that the bias towards classifying workers as employees will curb corporate America's appetite for using 1099-businesses, thus threatening the livelihoods of over half our nation's small business sector (according to the SBA, there are 32.5 million small businesses. Of those, more than 23.5 million are sole proprietors who serve as independent contractors, freelancers, consultants, designers, and writers).

The reasons why 1099-businesses choose to be independent contractors instead of their clients' employees was even more compelling than the fear of large corporations shifting away from a reliance on independent contractors. A few 1099-business owners explained physical handicaps that prevent them from earning a living in an office environment and their preference to market their value to multiple clients or building increased value within one client. Most of the independent contractor small businesses on the Zoom call explained why they valued the flexibility of being their own boss.

The one exception to the overwhelming opposition to the Department of Labor proposal voiced on the small business stakeholder Zoom meeting was a manga creator (artist/illustrator who specializes in a type of Japanese comic or graphic novel or its animated version, anime) who was upset that publishers and other clients are not paying enough for the work. In my opinion, re-classifying 1099-businesses as employees is not the answer to her challenge. In fact, if that is the Department of Labor's rationale, it flies in the face of how supply and demand should help determine market prices for goods and services.

In closing: I am proud of my involvement in the U.S. Chamber of Commerce's Small Business Council. Through that work and through my own business activities I have personally watched amazing small business owners as they learned to pivot during covid, deal with supply chain issues, figure out how to stay in business with huge inflation knocking at their doors, and so much more. Please do not move forward with this rule that will harm my business model, curb the use of 1099-businesses and other independent contractors, and threaten the flexibility of millions of small business owners who would prefer to be their own boss as opposed to someone else's employee.

Respectfully Submitted,

Renee Van Heel

Pay It Forward Processing

Cave Creek, Arizona