



VIA ELECTRONIC MAIL

February 10, 2012

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U.S. Department of Labor
Chief Evaluation Office
Office of the Assistant Secretary for Policy
200 Constitution Avenue, NW
Frances Perkins Bldg.
Room S-2312
Washington, DC 20210
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Re: Comments on the Voice in the Workplace Survey
Proposed Information Collection Request, 76 Fed. Reg. 238 (Dec. 12, 2011)

Dear Ms. Richie:

The National Partnership for Women & Families appreciates this opportunity to respond to the Department of Labor's request for comments on the planned Voice in the Workplace survey, which will gather critical information to aid the Department's enforcement efforts.

We applaud the Department of Labor for undertaking much-needed research on the use and understanding of laws enforced by the Department's Wage and Hour Division and the Occupational Safety and Health Administration. OSHA and the Wage and Hour Division enforce laws critical to the well-being and effectiveness of the United States workforce, including laws that require employers to provide employees with safe and healthy places to work, the Fair Labor Standards Act, and the Family and Medical Leave Act, among others. These laws establish important workplace standards and promote positive work environments. The Voice in the Workplace survey will help the Department assess the extent to which workers are aware of the laws OSHA and the Wage and Hour Division enforce, the accessibility of information about these laws, and the ability of employees to actually exercise the rights that the laws guarantee.

The 2011 employer and employee survey results will enable the Department to better fulfill its mission to promote and achieve compliance with labor standards, protect and enhance the welfare of the nation's workforce, and assure work-related benefits and rights. We believe the results of the proposed survey will provide the Department with critical information that can be used to drive policy development, facilitate enhanced outreach and education, and improve enforcement. In particular, the 2011 surveys will:

- Enable the Department to comprehensively evaluate workers' awareness and understanding of workers' rights laws and develop appropriate educational and guidance materials to respond to gaps in knowledge.
- Shed light on the types of workers to which education and outreach campaigns should be directed and identify the barriers to workers' ability to assert and enforce their rights. This knowledge will inform outreach and education efforts directed toward workers and employers and will provide critical information to help eliminate some of those barriers. In particular, we are glad to see that the proposed survey includes questions that identify the employee's gender, responsibilities, education level, and position within the organization, as well as the industry for which the employee works.
- Provide critical information to policymakers and others who seek to advance workers' rights. The data collected as part of this survey will be utilized by policymakers, advocates, and researchers at the federal, state, and local levels to aid in policy development and evaluation.
- Enable employers to better understand what employees know about their rights and where employee gaps in knowledge lie. The information collected by this survey could inform employer education and outreach plans and could help employers do a better job of communicating rights to their employees. This could in turn reduce the prevalence of litigation arising out of misunderstandings about the meaning and applicability of labor laws. The Wage and Hour Division alone received 40,000 complaints in FY 2010 and pursued 90% of the claims.¹ Though not all of these cases could be averted with more targeted education and outreach efforts to employers, it is likely that many arise out of misunderstandings about the law that could be averted if employers were better informed of the requirements and employees more clear about their rights.

In order to enhance the quality, utility and clarity of the information to be collected, we urge the DOL to gather information about the Family and Medical Leave Act (FMLA) in order to better understand how the FMLA intersects with other protections, and to guide the Wage and Hour Division's strategy for vigorous enforcement of the FMLA in both individual and systemic cases. The current survey draft's Wage and Hour module focuses solely on issues associated with the Fair Labor Standards Act (FLSA) and leaves unaddressed the ability of workers to take leave under the FMLA. The FMLA enables workers to better meet their work and family obligations without sacrificing their jobs and long-term economic stability. A worker voice survey would be incomplete without an assessment of the accessibility of leave under a law as important as the FMLA. Though the Department plans to conduct an independent survey focused on the FMLA, further examination about employees' awareness about the FMLA is warranted in the proposed survey. Inclusion of questions about the FMLA would give the Department a better understanding of employees' awareness of the different laws enforced by the Wage and Hour Division. The survey should, therefore, include questions focused on whether workers know about their FMLA rights or have ever had a problem asserting those rights.

¹ <http://www.dol.gov/whd/resources/ABAReferralPolicy.htm>

Finally, we urge the Department to make the following specific changes to the questions currently contained in the proposed survey:

- Question 23 of the Wage and Hour module asks employees to identify the current federal minimum wage. To get a more accurate picture of what workers do and do not know, the answers to question 23 should include a category that reflects the tipped minimum wage.
- Question 42 of the Wage and Hour module asks who an employee might talk to about pay violations. The response choices should include “a coworker” as a potential answer.
- Question 44 of the OSHA module asks why the interviewee would be unlikely to raise concerns about possible health or safety risks in the workplace. The answers currently provided neglect to include the possibility that employees would not report risks because they fear discipline or retaliation. Such an option should be included among the potential answers that employees may give.
- Questions 40 and 43 of the Wage and Hour Division module should also include answers that include the possibility that employees would not report risks because they fear discipline or retaliation.

Upon completion of the survey, we recommend that the DOL release the data in a way that can be utilized by the public. Specifically, we urge the Department to create and make available a public-use data file at the same time that the Department releases its own survey analysis. The public-use data file should include the full data set stripped of any confidential identifying information. In addition, we ask the Department to include state codes in the data file. State codes will enable an analysis of states that offer increased employee protections.

To minimize the burden of the information collection on employees who are asked to participate in the survey, we recommend that the Department protect the identity of those employees who provide answers to the survey. Employees are often afraid to provide honest answers to the types of questions contemplated by the proposed survey; they fear that their answers will be attributed to them and that their employers will consequently retaliate against them for making unfavorable statements about their jobs. As we discuss above, the results of this survey could provide critical guidance to the Department. To be effective, however, the information collected must be as accurate as possible. To that end, employees should be assured that their answers will be kept private and names and answers should be collected and coded in such a way that the privacy of workers is protected.

We appreciate this opportunity to submit comments about this survey. We support this information collection effort and believe that the results will enable the Department to better fulfill its mission to promote and achieve compliance with labor standards, protect and enhance the welfare of the nation's workforce, and assure work-related benefits and rights. If you have any questions, please contact Sarah Crawford or Vicki Shabo of the National Partnership for Women & Families or 202-986-2600.

Sincerely,

The National Partnership for Women & Families