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July 15, 2014

The Honorable Thomas Perez
Secretary of the Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Wage Determinations for the Fast Food Industry

Dear Mr. Secretary:

We are writing to request further information and documentation of the Department of Labor's (DOL) recent actions to mandate that an additional $3.81 per hour be added to the wages of fast food industry employees working at federal sites, including military bases, under the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq. While we are aware that this surcharge was reduced, we seek an explanation of how these shifts in policy regarding the calculation of "Fast Food Industry" wage determinations under the Service Contract Act came about, whether military families were consulted in this decision, and whether fast food restaurants can expect additional increases in the future.

Under the Service Contract Act, every Federal contract for services in excess of $2,500 must pay a prevailing local wage plus fringe benefits. In June 2013, for the first time, the Wage and Hour Division included a health and welfare fringe benefit component in Fast Food Industry wage determinations. The updated wage determination would have added an additional $3.81 per hour to the wages of fast food industry employees working under the Service Contract Act. We understand that because of a request from the Department of Navy, the Wage and Hour Division has reduced the new mandated health and welfare fringe benefit to $.92 per hour.

Despite the adjustment, we believe that it is important to fully understand the reasoning and basis for unilaterally expanding the fringe benefits without input from the employers and the community they serve.

Not only does this mandated benefits expansion set a precedent that future increases could be decided without stakeholder input, we share the concern of Navy, Army, and Air Force Exchange Service Command officials that the shift in policy will lead to a number of restaurant closings at our military installations. Indeed, many restaurant employers at military installations are already operating near break-even levels. When these inflated wage and benefit requirements are combined with the food pricing restrictions found in most service contracts, many may be unable to remain profitable. If these contractors cease operations at our military installations as a result of the Wage and Hour Division's shift in policy, it is our military and their families who suffer the consequences of lost jobs and fewer meal choices.

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We encourage DOL to consult and engage with restaurant operators and military family groups on this policy change and to further discuss and consider the potential negative impacts this new policy may have on military families and employment on our military bases.

To date, DOL has provided no explanation or justification for its sudden change in policy and its departure from a nearly 30-year history of continuously issuing Fast Food Industry wage determinations without a health and welfare fringe benefit component. Therefore, to better understand DOL's reasoning, please answer the following by July 31, 2014:

1. Why did DOL decide to revise its wage determination to add a health and welfare benefit component?
    a. Were there any specific event(s) that caused DOL to issue the new wage determination?
    b. In making its decision, did DOL consider that it was altering 30 years of DOL precedent?
2. Did a specific outside group(s) request the Wage and Hour Division revise its wage determination for "Fast Food Industry" employees? If so, please provide the name of that group(s) and, if applicable, a copy of the request or any documents or communications referencing the request.
3. Did the Wage and Hour Division consult with affected Federal contractors, contracting officers at other Federal agencies, or other stakeholders prior to issuing the revised wage determination in June 2013? If so, please provide the names of those parties. If not, why not?
4. What specific wage information did the Wage and Hour Division use to calculate the revised June 2013 wage determination for "Fast Food Industry" employees?
    a. Did the Wage and Hour Division use the same or different wage information in response to the Department of Navy's request for reconsideration of the wage determination in April 2014? If so, please explain the rationale for why different information was used.
5. Do you agree with the Navy's contention that the June 2013 wage determination would "raise labor costs so significantly for food providers operating Government concessions as to nullify profit and eradicate food worker jobs, thereby rendering Government locations commercially impracticable to operate"?[1]
6. Please describe the circumstances around what led DOL to reduce the surcharge from $3.81 to $.92.

Please have your staff contact Kyle Fortson at (202) 224-6770 with any questions.

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[1] Letter from the Department of the Navy, Office of the Assistant Secretary (Manpower and Reserve Affairs), to Laura Fortman, Acting Administrator, Wage and Hour Division, Department of Labor (April 8, 2014).

Sincerely,

Lamar Alexander
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