Congress of the United States
Washington, DC 20515

July 26, 2023

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Acting Secretary Su:

We write to you today to raise concerns about troubling reporting indicating that human resources technology platform Deel is willfully misclassifying its workers as independent contractors, and to request that the U.S. Department of Labor (DOL) launch an investigation to examine its highly unusual labor practices. Worker misclassification is a persistent and serious economic issue that must be addressed.

For its 15,000 clients, half of whom are U.S.-based, Deel offers a software platform that provides services for remote workforce management while helping ensure compliance with local labor laws and regulations. Since the onset of the COVID-19 pandemic, Deel gained significant traction, culminating in a $12 billion company valuation. As a means of maximizing profitability and growth, the startup made the decision to adopt highly unusual labor practices, including recruiting a significant share of its employees as independent contractors, covering everything from sales to senior management positions going all the way up to its CEO, who has publicly stated that he is an independent contractor for the company. As well as raising significant concerns about the welfare and well-being of the workers involved, we are concerned that it may have far-reaching consequences throughout California and the broader American economy.

As you know, under the Wage and Hour Division's (WHD) forthcoming final rule, the familiar six-factor economic realities test will be used to clarify whether workers are employees or independent contractors under the Fair Labor Standards Act (FLSA). Among the factors the WHD identifies is the nature and degree of control maintained by an employer over their workers, which could include scheduling, supervision, and price-setting. According to public reporting, numerous contractors at Deel describe working the same full-time hours as Deel's employees, and are "paid fixed monthly or biweekly sums, often used company equipment, were routinely assigned work, and had managers. Some even received annual reviews." Additionally, employees reported that the company actively emphasized parity between contractors and employees, with some not realizing they accepted a job as a contractor until their first day on the job. By blurring the line between contractors and employees, treating contractors and FTEs as equals likely violates independent contractor laws, thereby undermining employee rights and benefits.

Among the most fundamental rights afforded employees under the National Labor Relations Act (NLRA) is the right to organize, join, and collectively bargain through a union. Independent contractors are specifically excluded from these protections under the law. Thus, when businesses misclassify employees as independent contractors, they not only are likely underpaying their workers, they are also denying them their rights under the NLRA.

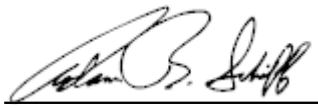
We also find it troubling that Deel, who clearly has its own issues abiding by classification laws, advises its clients employee classification and publishes public promotional materials to that effect. For example, Deel promotes "Deel Shield," enabling the company to hire independent contractors on behalf of its clients while assuming responsibility for the entire process, including hiring, compliance, invoicing, and payment. Deel also published a company blog post that essentially serves as a step-by-step guide for their clients on how to legally hire independent contractors, and in another, highlights the risks of misclassification—despite the likelihood that they themselves misclassify their own workforce. While also educating their clients on tax law compliance, Deel subtly emphasizes to companies that hiring independent contractors allows them to claim deductions on the fees paid to contractors. Our concern is that this will lead the company's growing client base to embrace the independent contractor model, short-changing workers of their rights and shrinking the tax base for essential government services.

Furthermore, misclassifying independent contractors and employees goes beyond just the legal implications, with far greater economic and social consequences. As you are aware, self-employment shifts the full FICA tax liability onto workers, placing the burden on contractors to pay their fair share of Medicare and Social Security taxes, in addition to any other federal, state, and local income taxes owed. A number of other benefits, such as health insurance and retirement savings, are also shifted onto the worker, and contractors are unable to receive essential benefits like overtime, paid leave, unemployment insurance, and well-established worker protections.

If it is likely that Deel is unable to abide by employee classification laws themselves, and they are in the business of helping their clients classify their employees, how sound can their advice be, and what is the broader systemic and economic impact as a result? By failing to fulfill their obligations towards independent contractors, businesses like Deel indirectly shift their responsibility for mitigating the ill effects of their actions onto broader communities, as well as self-employed workers themselves. In order to ensure that Deel honors its end of the bargain to support their workers, as well as to keep the issue from spreading to other companies and sectors, this issue is deserving of your further attention and scrutiny.

Thank you for your time and attention to this critical matter.

Sincerely,



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