

Written Intro for Fair Labor Standards Act 85th Anniversary Online Symposium
National Employment Law Project (NELP)

The *Fair Labor Standards Act* (FLSA) is one of our nation's most significant labor laws. First passed in 1938, it created the federal minimum wage, set limits on work hours, and banned oppressive child labor. Regrettably, more than 80 years later, key segments of our workforce—including farmworkers, domestic workers, and tipped workers—continue to be denied full protections under the FLSA.

The unequal and unfair treatment of these workers is a relic of efforts by white Southern leaders to deny basic wage protections for workers of color. In fact, Congressional Committee chairs—who came predominantly from the southern states—would only permit the passage of the FLSA and New Deal package if President Franklin D. Roosevelt excluded specific occupations in which Black Americans were concentrated.

Racism is not the only explanation for the unfairness embedded in FLSA. When the drafters of FLSA established the first minimum wage, they also allowed for disabled workers to be paid much less than that in section 14(c). The FLSA also allows farmworker children to be assigned to hazardous work at earlier ages than children in other sectors. In essence, whoever was the most vulnerable in 1938 was granted the weakest protection—if any at all—in the FLSA, and many of the exemptions and special rules established then continue to distort this bedrock employment law.

Thankfully, we have made significant progress to expand access to FLSA protections. However, as we mark the FLSA's 85th anniversary, we must remember that exclusions for certain occupations and segments of our population are still in place today and continue to block essential workplace protections for far too many Americans. Farmworkers are still excluded from overtime protections, live-in domestic workers are still excluded from overtime protections, and disabled and tipped workers are still not guaranteed the full federal minimum wage.

These exclusions from the FLSA have real consequences for workers—many of whom helped keep our country afloat during the COVID-19 pandemic. In a survey conducted in fiscal years 2019 and 2020, the mean and median reported total family income of farmworkers during the previous calendar year was in the range of \$25,000 to \$29,999, with nearly one-fifth of farmworkers reporting total family income of less than \$20,000 in the previous year. Domestic workers face a 26 percent pay gap compared to workers in other occupations—even when controlling for educational background and demographics. Moreover, employers can still pay tipped employees a minimum wage of \$2.13 per hour by using employees' tips to meet their obligation to pay the already insufficient federal minimum wage of \$7.25 per hour.

These workers deserve better than a system that unfairly prohibits them from benefiting from the basic employment protections that have long supported workers in other occupations.

That is why Democratic lawmakers on the House Committee on Education and the Workforce have led the charge in Congress to eliminate the decades-old exclusions in the FLSA and extend basic worker protections to

farmworkers, domestic workers, tipped workers, and workers with disabilities. For example, last Congress, Representative Raúl Grijalva (AZ-07) and Representative Pramila Jayapal (WA-07) introduced and pushed for legislation—the *Fairness for Farm Workers Act* and *Domestic Workers Bill of Rights Act*, respectively—to phase out exemptions for overtime pay protections for agricultural and live-in domestic workers. I have also continued to champion the *Raise the Wage Act*, which not only gradually raises the federal minimum wage, but also phases out the subminimum wage for tipped and disabled workers to ensure they make at least the full minimum wage. This Congress, I also reintroduced the *Transformation to Competitive Integrated Employment Act* along with Rep. McMorris Rodgers to equalize rights for disabled workers.

The hard work of advocacy groups, including the National Employment Law Project (NELP), is also critical to our collective effort to fulfill the promise of the FLSA. Just last Congress, NELP President and CEO Rebecca Dixon gave compelling and comprehensive testimony before the Subcommittee on Workforce Protections on the urgent need to end the FLSA’s discriminatory exclusions for the disabled and agricultural, domestic, and tipped workers.

Simply put, we cannot secure a brighter future for workers and our economy without ensuring that every American has full and equal access to basic worker protections under the FLSA. I commend NELP for its dedication to delivering on that goal, and I look forward to working with both NELP and my colleagues in Congress to forge a fair economy where everyone can succeed.