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Moderator: JONATHAN WOLFSON

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12:00 pm CT

Coordinator: Good afternoon. Thank you for participating in the U.S. Department of Labor's Summer 2020 Virtual Roadshow Stakeholder Webinar, *Supporting American Workers and Businesses*. All phones are now muted. I will unmute the phone line during the question and answer portion of the webinar in about 45 minutes.

Please use the chat function and select all participants to submit your questions throughout the webinar. Our subject matter experts will do their best to respond to as many questions as possible in real time via chat. We will also open the phone line at the beginning of the second segment of this webinar to give you an opportunity to ask questions and to respond to some of the questions received via chat.

You will now be joined by Jonathan Wolfson, Principal Deputy Assistant Secretary for Policy.

Jonathan Wolfson: Thank you. Good afternoon. My name is Jonathan Wolfson and I have the

privilege of running the policy shop here at the Department of Labor. Thanks for participating in the Office of the Assistant Secretary of Policy's stakeholder webinar.

Today is part of our Summer 2020 Roadshow, where we're offering you an opportunity to learn a little more about some of the things that we've been doing to try to help you, the stakeholders of the Department, better understand how our agency is working to help you know what the rules are and better follow those rules.

In a moment, I'm going to have the privilege to introduce our guest speaker for today, who is Cheryl Stanton, director of the Wage and Hour Division. But first, let me tell you a little more about myself and about the work of the Department. As the Deputy Assistant Secretary for Policy here at Department, I'm responsible for coordinating our regulatory process to help the policy agenda of the Secretary and the president.

In this role, I work regularly with the leadership of our Department, of the administration and agencies as well as economists, policymakers and attorneys across the Department. As I tell you more about the great work that we're doing here at the Department and numerous achievements, please use the chat function inside of the WebEx to ask any questions that you might have.

We have a number of subject matter experts who are on the line who will be attempting to answer your questions. There's some questions you may have, which may be beyond the scope of a simple chat answer. And for some of those, I'm just going to warn you in advance, we may end up taking them back and we'll get back to you later, maybe in a FAQ, or in another manner.

At the conclusion of our presentation with myself and with Cheryl, you're going to have an opportunity to ask some questions of us as well and we'll give you some additional instructions on that in a few minutes. At this time, I'd like to give you a little bit of an overview of some of the things that we're doing here at the Department of Labor.

All right, so today we're going to talk a little bit about the ways the Department of Labor has worked to support American workers and businesses here throughout the COVID process, as well as in the time before COVID. The Secretary of Labor likes to joke that he's had two different terms as Secretary, his term that ended roughly in February where he was able to go around the country and talk about the great jobs that were being created and the opportunities that we had to try to help workers identify jobs that they could move into and businesses try to identify workers. And now, he's had the COVID term of his Department of Labor tenure.

And so we're going to talk for a few minutes now about kind of how all of those things work together to help support America's workers and businesses.

So we're going to talk about a few things here. First of all, we're going to talk about the regulatory reform work the Department of Labor has been undertaking for a number of years.

Secondly, we're going to talk about some of the compliance initiatives that Department of Labor and specifically the Office of Compliance Initiatives, which is inside of the Office of the Assistant Secretary of Policy has implemented to try to make it easier for individuals, businesses and workers to know what their rights are and what their obligations are.

We're going to talk a little bit about how we've reimaged compliance

assistance in the face of COVID-19. And then we're going to also provide a few specific pieces of information on compliance work that we've done specific to the agricultural sector.

So we're going to start by talking a little bit about regulatory reform. Regulatory reform has been an important feature of the Department of Labor for a number of years. We've taken meaningful steps to identify regulations that impose burdens on workers, that impose burdens on employers and make it harder for them to do their work. And so we have been producing regulatory savings for a number of years.

In fact, from Fiscal 2017 to 2019, the Department of Labor provided over \$11 billion in regulatory cost savings to American businesses and workers, with 11 deregulatory actions in Fiscal Year 2019 alone. And we have almost \$8 billion in cost savings in Fiscal 2019 alone, which made us the number two regulatory agency in the entire federal government.

One of the goals, when we work on regulatory reform, is to provide clarity and consistency to the regulated community. We want to make sure that people know what the law is and that they can abide by it. Secretary Scalia talks a lot about how the Department of Labor needs to take care that law be faithfully executed. And he says that we're an enforcement agency.

But the most important piece of being an enforcement agency is not that we willy nilly enforce our laws across the entire population, but rather, that we focus on those who truly don't want to follow the law. But the only way to know who those bad actors are, is to provide really good compliance assistance and really good guidance so that businesses that do want to follow the law and do the right thing by that workers are able to know what they need to do, what paperwork they need to put together, so that if we do end up

coming in for an audit to process moves smoothly.

So even though we've had record high levels of enforcement, we have also put out record high numbers of compliance assistance tools, so that we can identify who is trying to follow the law and try to help them in doing that.

There been a few key deregulatory actions that we've taken over the last couple of years, which I'd like to highlight. I'm not going to have time to go into all the great things that each of these rules does.

But know that whether it's the overtime, or joint employer rule that does Wage and Hour Division put together, which make it easier for employers and employees to know where they fit into a company and know how much they can and can't get paid.

Whether it's the Association Retirement Plans, or the Electronic Disclosure Rule coming out of the Employee Benefits Security Administration, which provide cost savings to individuals who are working or to companies who are trying to provide required disclosures, or whether it's the TRICARE rule, which we make very clear who is and is not required to abide by specific reporting requirements under OFCCP.

The Department of Labor has implemented a number of deregulatory actions in the last few years. And we're not done. We've proposed a number of rules and I've just highlighted a few on the next slide where we talk about specific things that we've done to provide additional assistance in the trade adjustment assistance area, in H-2A, in tip regulations which we're working on here in the Wage and Hour Division where I'm currently sitting, predetermination notices coming out of the Office of Federal Contract Compliance Programs, and an additional rule on equal opportunities for faith-based grantees to make it clear

that an individual grantee of the federal government that has a religious basis doesn't have to put a warning label on the services they're providing to their communities.

One of the privileges I have here at the Department is to run the regulatory reform taskforce and that taskforce has multiple roles, the main role of which is to identify regulations which are not helpful to the regulated community or to those we're trying to protect.

So the goal is to identify what are the problematic or confusing regulations and how can we streamline them or remove regulations that don't actually make sense for objectives that we're trying to reach. The goal is to make sure that we have clarity and consistency across the regulations of the Department, whether that's pure regulations or whether that's in guidance or other materials that come out of the Department of Labor.

One of the key principles we have here is that we don't want to misuse guidance. And that's something that regulatory reform taskforce has been working on.

The president signed an executive order last fall that required us to oversee a comprehensive review of all guidance documents in the entire Department of Labor. Every agency has dug into old file cabinets, and pulled out materials stretching all the way back to in many cases before the Department of Labor began, to the times some of these agencies existed inside of other departments of the federal government.

And these pieces of guidance can be very useful for the regulated community, but some of them are old and outdated, or no longer align with the policy objectives of the division that they are issued out of. And so as a result those

have been pulled down. And so now individuals know that they can go on to the guidance portal, which we built as a result of this project, and that portal allows people to search guidance materials and know what the rules are and what they need to be following.

I'd like to take a couple minutes now and talk a little bit about compliance initiatives we have here at the Department of Labor. As I mentioned a moment ago, the Office of Compliance Initiatives sits inside of my office, the Office of the Assistant Secretary for Policy.

It was launched in August of 2018. And it exists mainly, to try to help individuals who are part of the regulated community know what the rules are, and know how they're supposed to be following them. So our office does not oversee how compliance initiatives are done, but instead, we partner with other agencies throughout the building, whether it's Wage and Hour or whether it's the Employee Training Administration, we work with all the other offices in the building to try to help them understand what they need to do to best help their regulated community comply with the law as it is. The Office of Compliance Initiatives has four key areas of focus.

They work on outreach, innovation, culture, and analysis. And in all four of these areas, they've worked with the individual agencies to try to improve the quality of their compliance and outreach materials to make sure that individuals who are business owners don't get confused by the products that we are putting out. So we've put together two really important websites to try to help people know what they need to do, regardless of what the specific agency silos we have here at the Department of Labor are. And those are [worker.gov](https://www.dhs.gov/worker) and [employer.gov](https://www.dhs.gov/employer).

And those two websites allow an individual to go based on their status,

whether they're a worker or an employer, they don't need to know whether their company is explicitly regulated by OSHA, or MSHA or whether the Employee Training Administration or Employee Benefits Security Administration regulates that specific question they have. They just know that they're a worker or they're a business, but they're a small business and they don't necessarily know where they fit in that space.

And so these two websites try to help people have a step-by-step process that they can go through to identify what are the rules that they need to follow.

Just a couple of highlights of things that our compliance office has done in the past year:

In Fiscal 2019 alone, the Department of Labor as a whole did 6,000 compliance assistance events, this was across all agencies in the Department and the Office of Compliance Initiatives has helped those agencies as they develop these programs to try to target to the audiences that most need those specific pieces of information in those events.

We've had over 54,000 attendees at these events, we've produced 30 different tools and 1,300 web pages and publications, all to help people better understand the rules that they need to understand and work around.

In Fiscal 2020 our office undertook a compliance assistance review, and we tried to figure out how to make our compliance assistance more accessible and understandable to the regulated community, and to figure out how to best deliver compliance assistance materials to our stakeholders. We worked across all the enforcement agencies specifically, but also across a couple of the other agencies in the building to make sure that this project was done.

One of the key findings that we had in that study was the Human-Centered Design was an area of helpful focus, we realized that if you can use Human-Centered Design to actually develop your materials, to make it easier for individuals to understand based on how they actually digest the materials, that we can produce compliance assistance which really does assist, it's not just going to we can pat ourselves on the back and say we did an interesting event or we put out an interesting webpage, but we actually developed it to align with the needs of the person in the organizations who are actually going to use our materials.

In the face of COVID, the Department of Labor has been able to use compliance assistance in some unique ways. We have used compliance assistance to create some online dialogues where individuals were able to contribute to the regulatory development process in real time as regulations and policy ideas were being developed.

First of all, we did a national online dialogue on providing expanded Family and Medical Leave Act under the new CARES Act and the Families First Coronavirus Response Act (FFCRA) that were passed in March of this year. Under those we had over 1,300 ideas shared, we received almost 1,300 comments, and we had over 5,000 individuals who participated in these conversations about questions that might come up.

As a result of these, we were able to generate a number of frequently asked questions about the new regulation, even as we were drafting the regulation itself, so that companies and individuals could figure out what their rights and obligations are in real time.

Secondly, we hosted a subsequent dialogue on reopening America's workplaces again, and we had hundreds of ideas shared, hundreds of

comments and almost 2,000 registrants – individuals who had different ideas, some of which we were able to very quickly operationalize as ways to help the American workforce get back to work.

In addition, the Compliance Initiatives shop was able to work with a number of the offices around the building to put together posters, translate them into other languages to put together other compliance assistance materials. So whether that's the Wage and Hour Division's FFCRA poster, whether it's OSHA's COVID-19 response documents, or OSHA's COVID-19 response website, the Department of Labor has had opportunities to use our compliance assistance shop to help make sure that the new rules and regulations that we have proposed are being put into practice by the agencies to help you, the individuals that actually have to live under the rules and the regulations that we're creating.

So finally, because we're focused specifically today on the agricultural industry, I wanted to just highlight a couple of resources that the Department has put out specific to agriculture.

First of all, OSHA and the CDC have put out an interim guidance document on agricultural workers and employers. This document can be found on both CDC and OSHA's website and it provides specific guidance regarding COVID for that specific industry.

In addition, the Wage and Hour Division has put together a compliance assistance agricultural toolkit. This is useful for employers in the agriculture industry to understand specific agriculture rules and regs that they need to be following. We have a workers rights card which can be passed out to individual workers in the agriculture sector, and an employer's pocket guide, which is similar to toolkit but it's a much smaller form document that can be

used if an employer is just trying to answer some of the most frequently asked questions.

In addition, the Department of Labor through the Wage and Hour Division has put out a workers' rights card under H-2A. This is a special immigration status for temporary workers in the agriculture sector, and we have a card for those individuals. So that's all I've got to talk about right now. I know some of you are going to have some questions and I'm happy to answer those in a few minutes.

We, here at the Department of Labor, covet your ideas and your suggestions for ways that we can make compliance assistance better for you and for the individuals that you work with. The goal is, as the Secretary has mentioned, we want the Department of Labor to be an enforcement agency. But, we understand that the only way that works is if we make it really clear what the rules are, so that people can follow them.

And so if there are things that we should be doing to make it easier for people to know what their rights and what their obligations are under our rules and regulations, please let us know. Our Office of Compliance Initiatives is happy to take that information in. If you have a question or thought, please email compliance@dol.gov. We'll collect those thoughts and we will try to do our very best to implement those ideas as quickly as we can.

Operator, I think we are ready to start collecting questions. So, as a reminder to our participants, you can use the chat function to submit questions to our subject matter experts.

In addition, if you have a question that you would like to ask Cheryl or me, you may press star one and talk to the operator to be placed in a queue to

answer questions. So I will ask the operator at this time to open the phone line and give our participants the opportunity to queue up your questions to ask them on the phone.

Coordinator: Thank you. Hello again, participants. This is the operator, please press star one to be placed into the question queue. Thank you.

Jonathan Wolfson: Thanks operator. At this time, I now really do have the privilege of introducing Cheryl Stanton who is the Administrator of the Wage and Hour Division here at the Department of Labor.

She brings a wealth of experience to the Department. Most recently having served as the executive director of South Carolina's Department of Employment and Workforce. Under her leadership, South Carolina's jobless rate dropped lowest point in at least 50 years.

In addition, during her tenure, South Carolina's workforce system, help place over 500,000 South Carolinians into jobs. She and I are going to respond to some questions that we received over the phone. But first, I'm going to ask her just a few questions that I think might be of interest to everyone on the call. Thanks for being here, Cheryl.

Cheryl Stanton: Thanks for having me. Thanks for coming to our lovely space to visit us.

Jonathan Wolfson: You guys have the best view in the entire office. And unfortunately, because of lighting, we can't let everyone see the capital that you get to look at every day.

Cheryl Stanton: Exactly.

Jonathan Wolfson: So Cheryl, we got to spend a lot of time on the phone, and in emails, and on teleconferences with one another. Tell everybody a little bit about what kind of March and April looked like for the Wage and Hour Division.

Cheryl Stanton: Yeah, even just saying those months brings back some emotions. As I think it does for a lot of people in the country right now. March really began with a focus on our own employees and our own operations in that we had a lot of employees that were starting to work from home who were in different situations themselves, health wise, their families, a lot of anxiety and structures are being taken away, right? People weren't able to go to the gym or to book club or to church.

And so we really started March thinking about how we would continue serving the American people with more and more people going home and teleworking from their homes for their own safety and the safety of communities.

And very quickly by about the middle of March, it became apparent that there were discussions that we at the Wage and Hour Division would take on an unprecedented, amazing new program. And that is paid sick leave for any employer, any private employer with fewer than 500 employees, and public employers with for the private sector, a counterbalancing dollar for dollar reimbursement through tax credits.

And so by the middle of March, we began to realize that we were going to have to figure out how to make this law work in a very short period of time to deal with this situation and the president enacted or signed the law on March 18, and through some great work with your office. Two mornings later, we had a webinar with about 16 or 1,800 people on it. Where all we did was ask the public: tell us the questions you have about this law.

Unfortunately, we were not ready to give any answers, which I think created some consternation at the time, but we furiously took down their questions. And that being on a Friday morning, by Monday afternoon, we published our first round of frequently asked questions, trying to address at least the most pressing questions we got out of that session.

That led to a really interesting way of doing rulemaking because what we continued to do, as Jonathan mentioned, the online dialogue where on that online dialogue, we kept looking to see what questions are people asking, what kind of information are people seeking about this law? And we were working through a series, we were calling them tranches, of frequently asked questions that we put up on a rolling basis, every few days through the balance of March and into April. But at the same time, we were writing a rule, and I say we were writing a rule because Jonathan was there hand in hand with me on that.

We had a lot of really great support by our careers and by our non-careers in the Department. But probably the last four or five days before the law went into effect on April 1, it was very important to us that we had that rule published, if nowhere else, on our website by April 1. Because we didn't think it was fair that employees and workers wouldn't know what kind of rights they had. And then employers wouldn't know what they were obligated to do, unless we had that rule published. But as everything happens towards the end of a deadline, we got into crunch phase and a group of us, there were probably about a half a dozen of us that for the last few days, one of us was touching that draft rule during every hour of a 24-hour period.

There were a lot of late nights, early mornings, handoffs, but we got the rule up on April 1. And then what happened was Wage and Hour went into the

implementation of this rule. And I will tell you on a normal day, we get somewhere between 1800 and 2000 phone calls. On April 1, we got over 9000 phone calls. And it became rapidly apparent that one of the most important things we could do during that period was customer service. I mentioned all of the frequently asked questions, the rules that were going up; we normally get about a half a million hits on our websites in a week.

During a six-week period, we got almost 27 million hits on our website because of how important all of this was. And so we really were focused on that. But then we realized we needed to answer the phones. And we've taken over 200,000 phone calls since this law went into effect. And I really credit our frontline in the field. They're taking these calls from home through a virtual call center that we had set up, ironically, at the end of 2019 into 2020. So that all we had to do was reroute phone calls to people sitting anywhere in the country.

And so those phone calls get answered and we were able to help people. We also did over 600 outreach events focused solely on the paid sick leave requirements. We did it through webinars like this. We did it through mass calls. We did it are all virtually because of concerns about making sure our own employees are safe. The other thing we've recently done is you'll start to see pop ups around the country. We put pop up signs that we can put at testing centers and other places so that workers who may be potentially exposed or concerned that they have Coronavirus – they can see their rights and responsibilities or their rights as they're being tested.

You're soon going to see billboards that we are doing in conjunction with OSHA to make sure people know their rights both about pay and safety, both in English and in Spanish. You will soon see some radio ads, again in English and Spanish, letting people know their rights under the paid sick leave. You

will also then see some animated videos that we will push out through social media and other outlets. In addition this morning, ironically, we didn't time it on purpose but it's perfect timing, we rolled out on our website, a FFCRA online tool that an employee can work through and answer a series of questions to determine whether or not they're eligible for paid sick leave.

I will tell you one is coming for employers shortly. But in some extent, if you know the facts that an employee has, you can use the employee side to figure out if you have an obligation to provide the paid sick leave. I will tell you we have crossed over 1100 closed cases under FFCRA, in which we have worked with employers and employees to determine whether paid sick leave is required and we have gotten these cases taken care of already in the short period of time, and we continue to close more every day.

This was just a very brief, I guess it was long not brief, overview of a number of things that we have been doing, particularly in the paid sick leave space, and that we will be doing in the coming weeks.

Jonathan Wolfson: Yeah, Cheryl. You're a little humble in saying it was a heavy lift. I mean, you and the Department put out a regulation in 15 days is a process that usually takes about six to eight months to do and so it was tireless work by many members of your team, of the OASP team, of the Solicitor's Office and the front office. Everybody came together. It was a pretty fun time, although I don't miss actually seeing my bed in between working, which was kind of a rare occasion for a while.

Cheryl Stanton: One of the celebrations we had during this period was – we were working so hard, I didn't make it to any grocery stores. And one day I came home and I found a box from Costco that my father had sent me with a whole slew of toilet paper. And so I posted that to all of our coworkers, but that was really

kind of the sense of where we were at where we were dealing with both what was going on in the community with our employees but really wanted to make sure that American workers were protected as quickly as possible.

Jonathan Wolfson: It was a fun project for all of us. In retrospect it wasn't, but it was important to do.

((Crosstalk))

Jonathon Wolfson: Has the Wage and Hour Division lost any staff or had to reduce its enforcement due to the COVID-19 pandemic?

Cheryl Stanton: You know, it's actually been quite the opposite. At the end of the last calendar year, Congress approved and the president signed into law a budget that gave us additional money to hire more investigators. The president signed that on December 20, and our January 6 we posted vacancies for 45 investigators and 15 technicians across the country.

A technician is vital to the investigation process because they are the ones who answer the phones and take in the complaints at the beginning, help the investigator with paperwork through the process, and who close out the cases and make sure that the paperwork supports that the employer properly paid the employees who are owed money. So the technicians are crucial to our investigations.

We have on boarded those 45 and 15, but in the middle of the onboarding, what we did was we did a vacancy announcement for another 45 investigators and another 15 technicians. We are in the process of onboarding those 60 additional staff, and later this week I will announce a vacancy announcement for another 50 or so investigators in the Wage and Hour Division.

So we have worked really hard to make sure that we keep that pipeline of investigators going and really, I credit the Department and our division called the Office of the Assistant Secretary for Administration and Management (OASAM) because they took the entire recruitment process and the entire onboarding process online, so we didn't miss a beat. So you are seeing a real rebuilding of the Wage and Hour investigatory ranks even during this situation.

Jonathan Wolfson: That's great. Tell us a little more about how as businesses start opening and different states are in different phases of reopening, how is Wage and Hour trying to meet the varying needs that you're seeing from employers and workers in all those various different phases, where it's not kind of where we were in January, where most businesses had one way that they were working and now we've got effectively 53 different ways and even localized more so.

Cheryl Stanton: Yes. And it is something we deal with as an agency and I know many of our employers, especially multi-state employers, are dealing with right now because there's even differences within what you're doing.

There's a number of things you can do. First of all, keep checking back on our website. Over the coming weeks and months you will see new guidance come out as we start to learn new things that employers are doing and they have questions on how that works under the Fair Labor Standards Act or the Family and Medical Leave Act or any of the laws we apply.

But more importantly, please keep your questions coming. Whether it's reaching out to the compliance assistance office with an OASP, whether it's calling your local offices. And I should say, there are two things you should take away today. Our website, which is www.dol.gov/whd, where all of this

guidance that I've been describing can be found. Or you can call 1-866-4USWAGE. So 866-4USWAGE. Once you do that you will be routed to your local office or the grouping of people who are handling your geography, and you can get your questions answered on those phone calls or you will get a phone call back from someone who can help you answer those questions.

Just like the compliance assistance office at the department level, is very focused on outreach, I will tell you that in each of our 54 district offices, we have a position called the Community Outreach Resource Planning Specialist, or CORPS as we call them. That individual is solely, solely dedicated to outreach. In many instances at some point in their career, they served as investigators in the Wage and Hour Division, but they have moved over to a role where they either work with employees, employee advocates, or employers and their associations themselves to answer questions, if presentations such as what we're doing here today, or even to provide compliance assistance materials.

So if you call that number, you will be routed to one of your local offices and you can get your questions answered. For those questions that are not answerable at the local office, they're elevated to the national office and often become the subject of future frequently asked questions or even what we call in the Wage and Hour Division field assistance bulletins. So that not only our investigators know the answers when doing investigations, but that the public know what standards they will be held to when investigated.

Jonathan Wolfson: Cheryl, are there any big projects that the Wage and Hour Division has on tap? Is there anything you're trying to finish up this summer?

Cheryl Stanton: Well, so many of you know that the Notice of Proposed Rulemaking (NPRM) for the tips rule was closed and we are working absolutely on that. We are also

working on making sure we get more guidance and materials out both in terms of FFCRA and paid sick leave, but that we also make sure that you all are aware of how the longstanding Family and Medical Leave Act and even more longstanding Fair Labor Standards Act is going to apply in our current situation. And of course there is always enforcement. And as Jonathan said, I believe and many of my frontline staff that I've been talking to say that often what happens is, if they educate the employer on what they're doing wrong, the employer will make it right.

And so the more compliance assistance we can do, we will. But on the back end of that is, there are employers who are doing the wrong thing that should not be, that know better. The one story I always tell, and it's often not people like on this webinar. Because you're probably on this webinar because you want to get it right. And you may be investing in an employer association, in HR services, lawyers, people who help you learn the rules and do right by them. But there are others who skirt the rules, and when I was visiting our offices previously, I would always have them tell me the most interesting investigation they were working on in the field.

And one day a woman told me in Orlando that she had to get to the second set of books to figure out what they were doing about paying employees. And when I said "What do you mean, a second set of books?" An investigator reached over and said to me, "That's nothing. A couple of years ago I had to get to the third set of books in order to figure out what was going on." And I said if you are keeping three sets of books straight so you know what's going on, you can figure out how to follow basic rules.

So in those instances we will be doing enforcement, in particular in the agriculture space, I want to let you know that we have been throughout this entire time responding to safety and health complaints, which as you know

particularly in the H-2A enforcement space is very important. Where how workers live, the conditions, whether they have potable water, all of those things are incredibly important in our H-2A investigations, and we have been going onto farms and very careful, socially distant and with protection ways, to check in on complaints that we are hearing about workers not being treated correctly.

We are going to be stepping that up and we will be starting to go back to some of our agency-initiated investigations in the agriculture space with our partners at OSHA, because our OSHA partners play a very important role in that area as well. And over the next couple of weeks and months you will start to see billboards in your more rural areas that remind agricultural workers of their rights and responsibilities both under the Wage and Hour wage payment laws and under OSHA's safety and health laws. And you'll start to hear more PSAs, public service announcements on the radio, again in English and Spanish, to alert that.

So in this space, if you have any questions about what your obligations are as an agricultural employer, I heavily encourage you to check our website and the OSHA website that has a series of guidance for farm worker standards and guidelines under this COVID situation.

I will also again encourage you to reach out to our local offices through the phone number, because again the CORPS in these offices are often very well versed both in terms of Migrant Seasonal Protection Act obligations for farm owners to employee workers, but also for those who have H-2A workers on their farms, the obligations they have to take care of those workers as well.

Jonathan Wolfson: Thanks, Cheryl. Well, at this time I think that we should see if anyone on the line has any thoughts. How's that sound?

Cheryl Stanton: Sounds good.

Jonathan Wolfson: All right, while we're waiting for our first question to come in over the phone, let's see if we have received any via chat that we can try to answer first. I'm not seeing any. Here comes one. We should say right now that we're just kind of the entertainment, and we've got the real experts in the background who are doing all the good work. If anything goes poorly you can blame Cheryl and I, but it's going to go well, you can thank the really good team on both of our teams.

Cheryl Stanton: The other thing I will say too with you is, that is true across the agency, and again I cannot put enough of a plug into - I know it's often interesting to sign in and see the people in Washington and what we have to say from a departmental level. But a lot of the really good detailed information comes from our offices here across the country.

Whether it is the technician answering the phone who can do basic compliance assistance, or our CORPS, who can answer more detailed questions. I know we are getting a lot of questions about languages, and I will tell you one thing I neglected to talk about in our FFCRA materials was, by way of example, exactly one week after the president signed FFCRA into law mandating paid sick leave, the department had two separate notices on its website that employers could use to post at their website, to post on their electronic board, or to mail out to people. That was immediately published in both English and Spanish and now we have another ten languages up - that's up in another ten languages.

And so languages you need that we have not posted, please let us know because we will absolutely look into providing those in other languages as

well. What's been really interesting to me Jonathan during our hiring process is how many of our offices have been hiring investigators who have second languages in Spanish, Russian, Chinese, in the whole gamut. And so it's been really fun to see where in the country we have people speaking languages besides English, but that's also a resource for you as well when we're doing investigations or compliance assistance.

Jonathan Wolfson: So it looks like the first question was for me, and they were wondering about the difference between using the word guidance or requirements. And that's a great question. I think that it's something that being a lawyer who enjoys these sorts of things, I don't play one on my day to day job here at the Department, but I've got that background and the difference between a requirement and a piece of guidance is supposed to be under the Administrative Procedures Act, that guidance isn't binding.

So when the president signed the executive order last fall, he really said what lawyers have been saying on both sides of the aisle for a long time, that when an agency puts out a guidance document, that we say you know, the law says you have to, you know, you have to pay your people \$10 an hour for work. The guidance then is where we start to kind of talk about what is work and what would \$10 an hour actually be, and could it be in Canadian dollars. But the only thing that's binding on the employer is what's actually in our regulations or what Congress has said.

And so, I think one of the important things that we've talked a lot about here at the Department is the importance of using guidance to help people know what the law is and ways that we think are best practice for following it, not to use guidance as a way for us to effectively say, "Well \$10 actually means \$12, and here's how we're going to calculate work to include things that aren't work."

And that's a problem, when agencies start doing that versus when our guidance really is a lot more of a compliance assistance process.

Cheryl Stanton: We have gotten a question in from I believe it's April, asking about the time frame of the paid sick leave requirements under FFCRA. As you know, the paid sick leave that is granted under FFCRA is being done in response to COVID-19 issues and all of the reasons related to the leave need to be COVID-19 related. To that end, Congress did make it effective April 1, 2020, but also created a sunset date of December 31, 2020. After that date, paid sick leave is not required.

You can again - go to our website and more information will be provided there, but the period of time in which leave is required is April 1 through December 31 of 2020, although some enforcement may go into 2021. The other question that we've been asked is questions about call centers, about navigating ongoing challenges and questions that HR professionals have to decide to rely on COVID-19.

Again, I would recommend that you call our toll-free number, 866-4USWAGE. It is what I would describe and we have described as a virtual call center, because in a traditional call center, while everyone sits in a room, the same room and is answering phones through what's called an interactive voice recognition service, we quickly found a way to take our interactive voice recognition service and make our call center virtual by fielding calls to our employees in their own homes and in a socially distanced area.

So if you call 866-4USWAGE, you can get someone who can assist you with all of your questions about different kinds of cases or different compliance assistance questions.

Jonathan Wolfson: Operator, I think we have a question on the phone.

Coordinator: Yes, we do have a question. We have a question from (Ava Barbera) from Rio Ranch 2000 LLC. Your line is open, please go ahead with your question.

(Ava Barbera): Okay, yes. My question is in regards to the FFCRA. Under category number three for the qualifying reason, it says if the employee is experiencing COVID-19 symptoms and is seeking medical diagnosis. If the employee is not experiencing symptoms, but decides to take time to test, is he still entitled to get the paid sick leave?

Cheryl Stanton: That's a great question. So under FFCRA, as we mentioned earlier, there's six qualifying events for taking paid sick leave, all of which are related to COVID-19 and the fight against this terrible disease. The third question was written in such a way by Congress, so the third reason rather, was written in such as way by Congress that the employee must both be experiencing symptoms and actively seeking a medical diagnosis. Either getting an appointment scheduled or getting the test and then waiting for the results.

However, recognizing that a lot of us have questions as to whether or not we have it, the law was written more narrowly to be in the situation where the employee has some kind of COVID-related symptoms, and the COVID-related symptoms can be found on the CDC website, the Centers for Disease Control and Prevention website. But if an employee has one of those symptoms and is actively seeking medical diagnosis, they do qualify for the paid sick leave. But people just getting the test because they're curious do not fall under the parameters set by Congress.

(Ava Barbera): Now, how about they're testing not because they have symptoms but because

they've been exposed?

Cheryl Stanton: So this is starting to get into other questions that I don't know that – we would collect a lot more facts before we determined this. For instance, if they had been exposed and were subject to a quarantine or isolation order by a federal, state or local public official. If they have been told to self-quarantine by a public health official or health care provider, if they were experiencing some symptoms after being exposed.

There are a variety of situations and this is exactly the kind of question that if you call our 866 number, 866-4USWAGE and work through some of these scenarios, our technicians and compliance assistance staff can ask a series of questions and really probe through to get to the right set of facts to make sure they answer your questions fully and accurately.

But those are the kinds of questions they would ask and would lead to further discussions to determine exactly when the paid sick leave applies and does not apply.

(Ava Barbera): Okay, thank you

Cheryl Stanton: Thank you.

Jonathan Wolfson: Operator, do we have another question on the phone?

Coordinator: And I'm currently showing no further questions or comments from the phones. Again, that's star 1 and record your name. And we'll stand by for further questions or comments from the phones.

Jonathan Wolfson: Well now I feel like I should ask you fun questions, because I've got you.

Cheryl Stanton: This is why I didn't want to agree to do this.

Jonathan Wolfson: We just got another question. The team's bailing us out here. We got a good question, it says "Are landscapers required to follow the same rules as other employees? Or other employers?"

Cheryl Stanton: So again, this is a great question that you can call and speak to a local - one of our local compliance assistance folks. There's a series of questions we can ask. First of all, landscapers, probably in most situations, are required to follow the Fair Labor Standards Act and pay people under certain minimum wage and overtime requirements.

A landscaper, depending on the size and the geographical footprint, may be required to comply with the Family and Medical Leave Act if they have a minimum of 50 employees and then if they have a certain number of employees within a 75-mile radius. For paid sick leave requirements under FFCRA, the question would be, does this landscaper have fewer than 500 employees. That would be another set of rules that would apply under the paid sick leave requirements.

And then also landscapers use employees on H-2B visas, and in the H-2B visa space that would be a whole different set of requirements that the landscaper would be required to comply with. I will add that in the Wage and Hour Division, people don't necessarily realize it, but we actually enforce 15 different federal laws, and some of the laws I haven't talked about that could apply are the Polygraph Protection Act, the Nursing Mothers Act. There are a series of other laws in which there are different obligations put on employers that we enforce.

And so again, if the landscaper had a federal contract, they may be subject to certain Service Contract Act requirements and wage, prevailing wage payments and certain health and welfare payments. So it just depends on the circumstances of that particular landscaper as to what rules apply to him or her.

Jonathan Wolfson: Thanks, Cheryl. We've got one more question that came in and someone asked for a follow-up to the question we got on the phone. "If an employee had to isolate in March due to COVID symptoms, kind of before FFCRA went into place, how does the FFCRA law apply to an individual who maybe took leave or was quarantined for any purpose prior to that law going into effect?"

Cheryl Stanton: So Congress had the law going into effect on April 1, and so anyone who took leave prior to April 1 was not - the employer was not required to provide paid sick leave to those individuals prior to April 1. If after April 1 that individual did end up qualifying for one of the six reasons to take paid sick leave again, either they were caring for someone who fell under one of the conditions under - that qualifies for the paid sick leave, whether they ended up under an isolation or quarantine order, or whether their child's school or place of care was closed and they needed the paid sick leave for that, that would entitle them to take paid sick leave at that time.

The paid sick leave portion of FFCRA is limited to two weeks, up to 80 hours over two weeks of pay unless of course a child's school is closed or place of care is unavailable. Then the employee can be entitled to another ten weeks of paid sick leave in that circumstance, with some other qualifying required. But March leave would not count against someone taking paid sick leave after April 1.

Jonathan Wolfson: I think that feeds into the next question that we just received, where

someone was curious. If COVID continues in our country past, you know, the fall or the end of the year, what is an individual supposed to do if they've used their full 12 weeks of Family and Medical Leave Act? How does that interact?

Cheryl Stanton: So first of all, the standard Family and Medical Leave Act, which is the part that provides that extra ten weeks of paid sick leave at two-thirds pay because a child's school or place of care is closed or a child's care provider is unavailable, does expire on December 31, 2020. And barring Congressional action, the Wage and Hour Division is not able under its own authority to extend that time period.

However, there's also the issue of the Family and Medical Leave Act. As many of you know, the Family and Medical Leave Act provides that if an employer is of a certain size, and I was describing that earlier, and has a certain concentration of employees within a 75-mile radius, the employees of that employer are entitled to up to 12 weeks of unpaid leave under certain conditions such as the birth of a child or a serious health condition.

The way that Congress wrote the law, and the way that they implemented FFCRA to amend the Family and Medical Leave, an employee who is entitled to both FFCRA and the FMLA, and the requirements I should note are different, both for what employers are subject to FMLA versus FFCRA obligations as well as what employees are entitled to take unpaid leave under FMLA and paid leave under FFCRA. But Congress wrote the law so that an employee in a 12-month period can only take 12 weeks of leave under both laws.

So you can't take both 12 unpaid under Family and Medical Leave and 12 weeks paid leave under FFCRA. I am going to say again, this is a very technical aspect of the law. This is probably part of the - part of the law that

we really spent a long time navigating how the different parts overlay. So to give a high-level answer like this on a webinar is very hard. This is definitely an area where you want to reach out and get more compliance assistance, because there's so many factors that go into which of the two laws or both apply and when one law begins and one law ends.

Jonathan Wolfson: Thanks, Cheryl. Operator, do we have another question on the line?

Coordinator: Yes, we do have a question or comment coming from (Michelle Blanchfield) from Sioux Falls Health. Your line is open.

(Michelle Blanchfield): Hi, everyone. The question I had was which federal regulation should we defer to for worker protections - migrant seasonal farmer protection - if the farmworker is undocumented versus if they're H-2A workers?

Cheryl Stanton: So we enforce the laws for all workers, and so if the person is not here on an H-2A visa, the H-2A requirements would not apply. However, we have a - there's an act called the Migrant and Seasonal Worker Protection Act, excuse me, that has a set of protections that apply to certain individuals. That person may qualify under that. There's also of course a basic Fair Labor Standards Act that may apply.

So again, that's a situation where it makes a lot of sense to reach out to your local office and provide more factual background so they can triage exactly which laws apply when.

(Michelle Blanchfield): Thank you.

Cheryl; Thank you.

Jonathan Wolfson: We've got another question for what documentation is required for FFCRA leave? This is something that we dealt with a lot, we had a lot of hours, I don't remember what time of the morning many of those conversations, but I think that these were high-level conversations around two in the morning a few nights in a row.

Cheryl Stanton: So this is a really interesting area because the goal is to make sure you get enough documentation to verify that leave is really needed, and that when the employer goes to get the tax credit from the Department of Treasury, there's enough to justify the tax credit. But at the time that the law was passed, a lot of things were closed. And we did not want people to feel like they had to go see health care providers just to get a note in order to qualify for leave.

And so there was a lot of discussion about the balance of that. And let me give you an example of where we landed. I mean, clearly the plan is to give the employer their names, the reason for leave, the dates of leave, some basic things so that you could work out the leave. But for instance, with the school. If a school had closed and a parent had to handle child care in order for - because there was no place the child could go. We recognize most schools put it on their website. They e-mailed out the information when the school was going to be closed. They may have sent a letter.

And so if you look at our regulations there's a lot of detail and a lot of discussion about this. But in that situation, you know if you just go ahead and print out that e-mail, print out that notice on the web site and provide it to the employer to show that the child's school is closed. But that was a really tough question to try and balance all of that out.

Jonathan Wolfson: Operator, do we have another question?

Coordinator: Thank you, yes, we have a question or comment coming from (Nichole Cox), from Venture, your line is open. (Nichole), your line is open, please go ahead with your question or comment. Check your mute feature.

(Nichole Cox): Oh, hi, this is (Nichole Cox). And my question I think was just answered, but more specifically if we have an employee who is requesting emergency paid sick leave because they've either been exposed or been experiencing some symptoms, is there any medical documentation that we should be asking or is the - what the IRS has stated is just a part of their employee statement with the health care provider sufficient? Are they required to provide any sort of medical documentation?

Cheryl Stanton: Again, great question because the documentation question is very tricky. And what we did make clear in our regulations was that in those situations what the Department of Treasury identified as the documentation needed for FFCRA sick leave would suffice for the employee for documentation for paid sick leave.

I made that qualification because as many of you know, the requirements for medical documentation under the Family and Medical Leave Act for unpaid leave is very detailed and the forms are available on our website, and those forms would be used in those situations. But again, for paid sick leave, you can look both on our website which will often push you over to the Treasury website about documentation.

(Nichole Cox): Okay. So just to clarify then, so then for short we're just looking, at least with the employee statement what the IRS has said, so something with the health care provider or just that simple thing - no official doctor's note necessarily for the FFCRA sick leave is required?

Cheryl Stanton: Definitely, and if you have follow-up questions on this or want to get deeper into facts and scenarios. Again, feel free to reach out to 1-866-4US-WAGE.

But based on the facts that you just described that appear - that sounds like the right answer. Yes.

Jonathan Wolfson: Yes. I think that the key thing to remember is we were - when we were working on the regulation, we were trying to make it so that an employer was able to get the information they were going to need to get their reimbursement, their tax credit through Treasury.

So we wanted to make sure they got sufficient information to get that. But not to try to provide any additional burden. So we wanted employees to be able to take the leave. But we didn't want an employee to simply, you know, send a text message and say hey, I'm taking ten weeks of leave peace out. And then the employer wouldn't be able to get their reimbursement. So we're trying to balance those two things when we were working on the reg.

I think we've got time for maybe one more question. So I'm going to read one more that we've gotten through the chat function.

And they said a lot of employers are now sitting kind of close to the end of the 12-week FFCRA leave period. What kind of are the employer and employee options in this post FFCRA leave period? What can they do?

Cheryl Stanton: So a couple things, remember that the regulation is written broadly. That we're not just talking about a school being closed but also a place of care place.

And as we made clear in our Frequently Asked Questions, summer camps, in particular, could be places of care in certain situations for which FFCRA paid

leave under the expanded Family and Medical Leave Act are available.

So you need to take that into account as employers and realize it's not just closed schools but also other places of care that are closed.

And again, you know, we really have been trying to encourage employers and employees to work together during this period for flexibility. It's exploring telework options, exploring situations of different times of day, people coming in and working. The law itself only requires 12 weeks of leave for that situation of the school closure or a place of care unavailable.

But we did recognize in the regs and the Frequently Asked Questions that there would be times during the day where a parent might be able to work even though the child's at home. And so this concept of intermittent leave, that if you could work for a few hours from home while the children were doing, you know, activities outside and only needed to take partial days of leave and to try and work with your employees and be as flexible as you can in order to allow employees to stay with you so you could keep your employees, you could continue to be productive and get your work done and those activities continue.

One thing we did not identify and we should is that there is a small business exemption for the child leave provision only. The child leave provision only - so only in the instance of a parent wanting paid sick leave for a child who's school, or place of care closed. And if you have less than 50 employees you can look on our website regarding the small business exemption and what you would need to prove in order to meet the small business exemption.

But again, we really encourage employers and employees to work together to find solutions. We used to call ourselves in the Wage and Hour Division the

scrappy bunch because we get very creative in how we would do our investigations. And we would prove time off the clock being worked and prove and get to the bottom of things. And now what we talk about is flexibility and being adaptive and figuring out how to deal with new situations in new ways.

And so we also encourage workers and employers to do the same. I think we have...

Jonathan Wolfson: Looks like we have one last question on the phone.

Coordinator: Thank you. We have a question or comment coming from (Caroline Brown) from Fisher Phillips. Your line is open. Please go ahead with your question or comment.

(Caroline Brown): Good afternoon. Thank you for taking the time to do this. It's been great. And I want to just acknowledge all the work on the website. It has really - it has a wealth of information added for compliance purposes and I'm sure - I know our clients appreciate that and other employers too.

Along the same lines, the Wage and Hour Division recently made a change with respect to 7(i) and the removal of the retail and nonretail list which were interpretations in the CFRs and now the department has essentially pointed to the actual test itself that is part of the statute and the regulations.

And I was wondering if that same kind of clarification if we would be looking at more of that coming as a general approach or is it something that at least is under consideration as you are approaching different topics to kind of stop and look at what has been somewhat conflated because of this mix of regulations and interpretations.

Cheryl Stanton: So here at the Department of Labor we do particularly in the Wage and Hour Division take a look at not only our regulations but our guidance. And we're constantly looking for ways to make it clearer but also more useable for employers and employees.

And whether it's cleaning up issues in the CFR, whether it's issuing new regulations, I know Jonathan mentioned earlier that after I guess 16 - 15 years the Department of Labor finally and successfully updated the standard salary level for when under that threshold of salary an employee would not be eligible to be exempt from overtime. Similarly, we took rules from the 50s and 60s like regular rate and fluctuating workweek and frankly joint employment.

And we updated those regulations through notice and comment to reflect more current situations whether it's the perks allowed in the workplace, whether it's when joint employment rule was originally written franchises did not even exist let alone a discussion in the regulation about the franchise model.

So modernizing our regulations that way. We, as I mentioned continue to look for opportunities to write opinion letters. So those of you who have specific questions under the Fair Labor Standards Act or the Family Medical Leave Act or other statutes we enforce can write a request into the Administrator and ask us to opine in what is called an opinion letter that is made public to everyone what the answer to a particular situation is.

So we look to a variety of regulatory, sub-regulatory, and guidance methods to continue to make things clearer and modern for the American worker and American businesses. So thanks for noting the regulatory work we're doing as well.

Jonathan Wolfson: I think that wraps it up. I think we are running out of time. So I want to just thank you Cheryl...

Cheryl Stanton: Thank you.

Jonathan Wolfson: ...for being here. And thank you, folks, for joining us. We really appreciate you taking the time out of your schedules to join us. Please do not hesitate to contact us. You know we say all the time that while we are here trying to do what we think makes sense and what we think is good policy and it is lawful, you are the folks who are actually on the ground, who are living under the rules and regulations that we are putting out. And we don't know whether what we're doing is the right thing to do unless you tell us.

And so we really do appreciate you providing us feedback. Help us to identify if there are compliance assistance documents that should be tweaked to make them easier for people to actually apply and use, let us know that.

I want to remind everyone that this webinar has been recorded. It's going to be available on the Department of Labor's website so that will be a resource if you know others you think would benefit from this.

I also want to invite you to join us. We're going to continue this Roadshow. Cheryl gets to step out but I will be hosting the Administrator of OSHA on Thursday at the same time. And Loren Sweatt and I, are going to be focusing specifically on the manufacturing and construction industries but as with this call, this is an opportunity for folks in a lot of different industries to hear what we're talking about.

If you have any questions feel free to visit employer.gov and worker.gov and

dol.gov for more information on the work that we're doing. And don't hesitate to email us at compliance@dol.gov to share any thoughts or suggestions.

Until then, take good care, stay safe, and be healthy. Thanks.

Cheryl Stanton: Thank you.

Coordinator: That concludes today's conference call. Thank you for your participation. You may disconnect at this time.

[End of segment]