



The Honorable Bernard Sanders (D-VT)
Chairman
Committee on Health, Education, Labor and
Pensions
United States Senate

The Honorable Bill Cassidy (R-LA)
Ranking Member
Committee on Health, Education, Labor and
Pensions
United States Senate

June 20, 2023

Dear Chairman Sanders and Ranking Member Cassidy:

On behalf of the Coalition for Workforce Innovation (“CWI”), we submit this statement for the record to the United States Senate Committee on Health, Education, Labor, and Pensions (the “Committee”) for the hearing on S. 567, the *Richard L. Trumka Protecting the Right to Organize (PRO) Act of 2023*. While we appreciate the intent of the bill to bolster the middle class and the rights of workers, the legislation as currently written would limit opportunities for millions of individuals who choose independent work for the flexibility, freedom, and entrepreneurial opportunity it provides.

CWI’s membership represents worker advocates, entrepreneurs, start-ups, businesses, and trade associations that support the modernization of federal workforce policy to enhance choice, flexibility, and economic opportunity for all workers. Our broad and diverse stakeholders span the service, technology, media, transportation, distribution, and retail sectors where independent workers have gained access to flexible work arrangements that fits their lifestyle. Today’s independent workers include part-time students, caregivers, and retirees who often seek this type of work as a source of supplemental income.

Simply put, the legislation would compromise the ability of independent workers to flexibly choose when, where, how, and the frequency they wish to work. These aspects of independent work are absent from an employment relationship and will frustrate and limit the economic opportunities of workers who currently choose to work independently. CWI respectfully urges opposition to the PRO Act.

“ABC” Test

CWI is concerned with the new amended definition of employee in Section 101 that would dramatically narrow opportunities for independent workers. The “ABC” test requires all three factors be met to be classified as an independent contractor. The first factor, which is already part

of the current test under the National Labor Relations Act, requires that the worker is free from control or direction in the performance of the work under the contract of service. The PRO Act adds two other requirements that the independent worker must satisfy.

The second factor limits independent workers' opportunities by denying them the ability to provide services that are within the usual course of the business for which they perform the service. This restricts and eliminates many opportunities independent workers currently enjoy providing services within their chosen profession and expertise if those services are within the line of business provided by the company to the general public. If the company controls the worker's performance of services under the NLRA today, the worker is classified as an employee.

The third factor is a requirement that the worker must simultaneously offer and provide their services to multiple entities. It would not be satisfied if the business partner provides the independent worker with the best and only opportunities, they desire at any one time. It states that the individual must be customarily engaged in an independent trade, occupation, profession, or business. This new requirement would limit the opportunities, flexibilities and freedoms of independent workers and is unwarranted.

A requirement to meet all three criteria of the "ABC" test regardless of the appropriateness of the three criteria to a specific worker relationship or long-standing industry practices is simply untenable. The legislation also ignores the multitude of exemptions built into or added to state laws that have adopted a version of the ABC Test, in favor of a one size fits all ABC litmus test that does not exist in any state that has adopted an ABC test for any purpose.

We understand that a number of states currently utilize an ABC test for one or more state law purposes, but there are different versions in many states. The test articulated under the PRO Act is the strictest version that is only used, in a few states, that have many exemptions because they have recognized a one size fits all approach does not work. Implementing a test used in a handful of states, yet with multiple allowable exemptions is inadvisable and does not reflect the evolving nature of worker relationships and worker desires and priorities. The legislation also does not take into account that a test under federal law already exists, the 20-factor common law test.

Individuals Want to Work Independently

Data continues to show that antagonism to independent work is misguided given the available opportunities for those who find work in this way. Report after report [highlights the growing popularity](#) of independent work across the economy. Now more than ever, we need a mix of commonsense relief measures and policies that promote and maximize opportunities and flexibility for workers. We must ensure that policies created and promoted are in alignment with the diversity of workers and are inclusive of their lifestyles. We believe it's time to create policies that cause independent workers to feel proud of their contribution to the economy, and prove the independent worker voice is both heard, and respected. Independent work is and will continue to be crucial in helping our economic recovery, but only if lawmakers allow it to be an onramp to economic opportunity and recovery.



While CWI commends efforts to create an economy that works for all stakeholders, we urge you to oppose the bill's approach to independent work. Instead, CWI strongly supports the [Worker Flexibility and Choice Act](#), bipartisan legislation introduced in the 117th Congress which would protect independent work for those who choose it while providing greater protections and access to benefits than exists under current law.

To learn more about CWI, please visit www.workforceinnovation.net

Sincerely,

Coalition for Workforce Innovation