



Senator Ron Wyden
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

August 27, 2021

Dear Chairman Wyden:

The Coalition for Workforce Innovation (CWI) appreciates the intent of the Unemployment Insurance Modernization Act discussion draft. Throughout the COVID-19 pandemic, the United States experienced traumatic disruption in employment which put new pressures on our existing unemployment insurance systems. It is necessary that we explore options to modernize these systems so our country is better prepared to face future shocks to the nation's economic and employment system to ensure all workers have a safety net when they may need it most.

However, CWI believes that the inclusion of the so-called "ABC test" in the bill will limit the rights and opportunities of independent workers who choose to function independently. Those individuals choose this style of work to ensure their freedom to work for multiple entities, build flexibility into their work lives, and enhance their own profitability by utilizing their own capital to provide results.

During the pandemic, more individuals have turned to independent work opportunities to assist them in meeting their financial needs. Opportunities that did not exist in the traditional employment labor market. It is important to not disrupt or eliminate these opportunities, but to preserve them while recognizing that other avenues exist to strengthen existing unemployment insurance systems.

CWI was formed to bring together a broad, diverse group of stakeholders like the service sectors, small business start-ups, technology companies as well as worker advocates to modernize federal workforce policy to enhance choice, flexibility, and economic opportunity for all workers. The UI Modernization Act seeks to improve our UI systems. However, it will indirectly compromise the ability of American workers to choose when, where, how much, and how they wish to work. CWI respectfully opposes the legislation if it includes the ABC test.

"ABC" Test

CWI is concerned that the new amended definition of employee in Section 212 would dramatically narrow the opportunities for independent workers.

The application of the “ABC” test as a federal requirement to state UI systems is untenable. The legislation will conflict with the multitude of exemptions built into or added to the state laws that adopt a version of the ABC Test, in favor of a one size fits all litmus test that does not exist in any state that has adopted an ABC test.

The UI Modernization Act would seek to use the same test articulated within California’s embattled 2019 AB 5 legislation. This language has been vigorously opposed by the independent worker community and includes dozens of exemptions. It has also been subject to countless legal challenges, leaving much uncertainty for businesses and workers alike.

The “ABC” test requires all three factors be met to be classified as an independent contractor. Prong A requires that the worker is free from control or direction in the performance of the work under the contract of service and in fact. This factor is already part of the current test under the Internal Revenue Code and the National Labor Relations Act (NLRA). However, the discussion draft also adds two other “litmus-test” requirements that the independent worker must satisfy that are not independently required under either test.

Prong B limits independent workers’ opportunities by denying them the chance 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 public is an important aspect of independent work.

CWI is opposed to use of Prong C except as a factor in the overall review of the relationship. Some state laws interpret this in other more flexible ways than as written in the discussion draft. For example, by allowing a showing that the individual is involved in an independent business by reference to numerous relevant factors.

If this factor were to be adopted, we urge you to consider allowing it to be satisfied in more flexible ways that recognize that independent workers are not a one size fits all relationship. For example: having multiple clients or customers, making independent decisions that affect a worker’s profitability, previously performing services for others as an independent worker, and holding oneself out as an independent worker on tax and other filings.

Individuals Want to Work Independently

Data also continues to show that antagonism to independent work is misguided given the available opportunities for those who find work in this way. A recent survey from 2020 of over 600 independent contractors showed that 94% of respondents were either somewhat or very satisfied with their independent work style. Further, 89% of respondents agreed that independent style of work made them feel like they are no longer stuck in a bad economic situation — allowing for new opportunities, and flexibility to improve their work lives. Finally, voters in California roundly rejected a similar restrictive approach to independent work with the passage of Proposition 22.

Now more than ever, we need a mix of commonsense relief measures and policies that promote and maximize opportunities and flexibility for workers. 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.

CWI commends the efforts to modernize the worker safety net, but the inclusion of the ABC test would harm millions of workers unintentionally. We encourage you to remove this language from the UI Modernization Act.

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

Sincerely,

Coalition for Workforce Innovation

CC:

Members of the Senate Finance Committee