
21st Century Worker Act

Current federal labor policy is complex and openly hostile to flexible work arrangements. This confusion arises because different laws, including the Fair Labor Standards Act (FLSA), the U.S. tax codes, and the National Labor Relations Act, apply varying tests to evaluate whether an individual is an employee or an independent contractor.¹ As a result, businesses frequently avoid hiring independent contractors due to potential misclassification risks and liability.²

In 2025, independent professionals comprised 4.1% of the U.S. labor force, with an estimated 6.9 million skilled independent workers generating a combined \$319 billion in revenue.³ As more individuals turn to flexible work arrangements instead of traditional nine-to-five jobs, the growing demand for such options requires updated regulations that reflect current workforce preferences.

In October 2022, the Department of Labor (DOL) issued a Notice of Proposed Rulemaking that created a six-factor “economic realities” test under the FLSA.⁴ This test emphasized economic dependence and favored employee status in gig economy and flexible work scenarios. The proposal failed to recognize that workers often prefer alternative work arrangements. Luckily, under the current administration, the DOL issued guidance in May 2025 stating they would no longer enforce the DOL ruling from the Biden administration.⁵ However, Congress must enact a permanent solution to ensure clarity and stability.

Senator Lee’s 21st Century Worker Act establishes a clear and consistent bright line test for federal labor and tax law. By outlining the most common factors for classifying workers as independent contractors or employees, this test eliminates ambiguity and empowers businesses and workers to pursue flexible arrangements confidently.

Bill Specifics

This bill would:

- Create a bright line test by outlining the most common factors that make a worker an independent contractor and the most common factors that make a worker an employee.
- Create a third category for workers who do not cleanly meet the definition of an independent contractor or employee. It is impossible for the government to conceive of every possible work arrangement. This bill outlines a process for workers and businesses to mutually elect worker status in instances when a worker cannot be cleanly classified as either an independent contractor or an employee.
 - If the business and its employee cannot agree on status, the worker will be classified as an independent contractor by default.
- Commission a GAO study to identify how harmonizing other laws with this bright-line test would impact workers and payors.

¹ <https://www.heritage.org/jobs-and-labor/commentary/defining-contractor-status-would-provide-some-relief-struggling-workers#:~:text=Clarifying%20the%20definition%20of%20a,workers%20and%20small%20business%20owners.>

² <https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf>

³ https://npm-assets.fiverredn.com/assets/@fiverr/freelance_impact_perseus/freelance-economy-2025.5357bdc.pdf

⁴ <https://www.dol.gov/newsroom/releases/WHD/WHD20221011-0>

⁵ <https://www.dol.gov/newsroom/releases/whd/whd20251222>