

Direct Seller and Real Estate Agent Harmonization Act

Direct selling is a retail practice that relies on independent contractors to sell larger brand products through demonstrations, social platforms, and personal connections. Unlike a traditional work arrangement, direct selling allows workers to set their own schedules and generate their own wage through commission. Similarly, real estate agents also typically work for a broker or larger firm while maintaining their own schedules and client lists, creating their own marketing plans, and negotiating their own transactions. Both direct selling and real estate work arrangements offer significant savings for companies, as it removes their obligation to provide health coverage, life insurance, minimum wage, and other employer-sponsored services. The employee also benefits from a personally controlled income and work-life flexibility.

This relationship between the parent company and the direct seller is only possible because the Fair Labor Standards Act (FLSA) allows for an independent contractor designation. FLSA relies on the Department of Labor's economic realities test to analyze factors like the permanence and primary beneficiary of an employer-employee's work relationship, whether the employer or employee holds primary control in the relationship, and who has the greatest opportunity for profit and loss. Under this economic realities test, direct sellers and real estate agents have typically been designated as independent contractors and, as such, have not been entitled to minimum wage, overtime compensation, or other employer benefits. U.S. tax code also classifies them as independent contractors.

However, since 2015, class action lawyers have begun encouraging these workers to sue for employer benefits, claiming improper employee designation. These suits threaten the independent worker model and could collapse the industry if companies no longer see a benefit from independent contractors. If this were to happen, roughly over 6 million direct sellers and realtors would lose the flexibility to make a separate income on top of parenting, school, or other work endeavors.

Bill Specifics

This bill would amend the Fair Labor Standards Act to clarify that the term "employee" does not include any direct seller or qualified real estate agent (as defined in Section 3508(b) of the Internal Revenue Code). Doing so would establish these workers as independent contractors—not by subjective interpretation but by statute—aligning federal law with federal tax code and creating hiring dependability for the companies and workers.
