



Senator Patty Murray
Chair
Senate Health, Education and Labor Committee
154 Russell Senate Office Building
Washington, DC 20510

July 22, 2021

Dear Senator Murray,

The Coalition for Workforce Innovation (CWI) appreciates the intent of S. 420, *the Protecting the Right to Organize Act*. Proponents say it will bolster the middle class and champion the rights of workers. However, CWI believes the bill will limit the rights and opportunities of independent workers who choose to function independently, ensure their freedom to work for multiple entities, have flexibility in their work lives, and enhanced profitability by utilizing their own capital and substitutes and helpers to provide results.

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.

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. The bill compromises the ability of American workers to choose when, where, how much, and how they wish to work. DSA respectfully opposes the legislation.

“ABC” Test

CWI is concerned with the new amended definition of employee in Section 101 that would dramatically narrow the opportunities for independent workers. The “ABC” test requires all three factors be met to be classified as an independent contractor. First, 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 National Labor Relations Act. However, S. 420 also adds two other requirements that the independent worker must satisfy.

One other factor limits independent workers’ opportunities by denying them the opportunity 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 considered to be 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 other requirement is 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 untenable. The legislation also ignores 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 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 is inadvisable and does not take into account 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. A recent survey 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 create an economy that works for all stakeholders but urges you to oppose S.420 and its approach to independent work.

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

Sincerely,

Coalition for Workforce Innovation

CC:

Senator Richard Burr

Members of the Senate Health, Education, Labor and Pensions Committee