

S. _____, the Modern Worker Empowerment Act *Introduced by Sen. Tim Scott (R-SC)*

The Modern Worker Empowerment Act would take a meaningful step towards creating certainty, clarity, and consistency for workers, job creators, and entrepreneurs by harmonizing “employee” definitions across federal laws using the proven ‘common-law’ test.

Background: For many workers, independent contractor (IC) status provides the ideal avenue to entrepreneurship, whether as a core professional track or a source of supplemental income. A 2016 McKinsey & Company report estimated that roughly 68 million Americans engaged in independent work, with 46% leveraging contract work as their primary source of income. A sizable majority of these ICs reported turning to independent work by choice, rather than out of necessity. These findings track with other studies and reports. A 2018 Bureau of Labor Statistics survey, for instance, found that fewer than one in every ten ICs would prefer an employer-employee relationship. IC status affords these workers a level of flexibility and autonomy that other, more rigid, work relationships could not provide.

Unfortunately, a lack of clarity and consistency in worker classification standards across different federal and state statutes has created uncertainty for workers and firms alike, limiting opportunities for entrepreneurship and stifling innovation. Forced to navigate a patchwork of conflicting tests, some potential clients have opted not to do business with ICs at all, while others have faced needless litigation.

What the Modern Worker Empowerment Act would do: The Modern Worker Empowerment Act would update the Fair Labor Standards Act (FLSA) to codify the common-law definition of “employee,” aligning the FLSA with other federal laws, as well as numerous state statutes and recent Supreme Court decisions. Used by a variety of federal agencies, the common-law test relies on multiple factors, focused primarily on control and independence, in order to determine the appropriate classification for a given worker.

Why the Modern Worker Empowerment Act is needed: By creating consistency and clarity across federal statutes with respect to employee and IC status, this legislation would create certainty for workers, job creators, and federal agencies in making classification determinations. While a patchwork of state laws would likely remain, the bill would thus harmonize federal definitions and standards, resulting in greater efficiency and predictability while removing a potential deterrent to entrepreneurial opportunity for American workers.

Who supports the Modern Worker Empowerment Act: Allstate, American Bakers Association, American Moving & Storage Association, American Society of Travel Advisors, American Trucking Associations, Americans for Tax Reform, Auto Care Association, Center for Worker Freedom, Competitive Enterprise Institute, Customized Logistics and Delivery Association, Dart Transit Company, Direct Selling Association, Electronic Transactions Association, Financial Services Institute, Forest Resources Association, Freedom Foundation, Heritage Action for America, Hispanic Leadership Fund, HomeCare.com, Independent Bakers Association, Insights Association, International Franchise Association, MBO Partners, MSPA Americas, National Association for the Self-Employed, National Association of Home Builders, National Council for Languages and International Studies, NetChoice, Private Care Association, Rio Grande Foundation, Small Business & Entrepreneurship Council, TechFreedom, The Heartland Institute

If you have any questions or would like to add your boss as a cosponsor, please reach out to Conor Sheehey at Conor_Sheehey@scott.senate.gov.