



Why it's a mistake to expand California's ABC Test into federal law:

Most independent contractors want to stay independent

- 70% to 85% of independent contractors want to remain independent contractors.
- The nation's largest group of independent contractors is in the top quartile of earners. These workers certainly aren't exploited or misclassified.
- In California, the ABC Test law did *not* spur the creation of union-friendly jobs.
- Instead, California's ABC Test law destroyed the careers of prospering independent contractors in more than 300 professions. To keep people working, California had to pass a cleanup bill granting exemptions to some 100 professions, including insurance inspectors, cartographers, youth sports coaches, real estate appraisers, writers and photographers.
- Like the California law, a federal ABC Test would disproportionately hurt women and people of color, who face barriers in traditional jobs but can thrive as independent contractors.
- In November 2020, California voters overwhelmingly rejected the ABC Test law, passing Proposition 22 by a margin of 59-41% to exempt app-based drivers from it.

Like the California law, the proposed federal ABC Test assumes working conditions that existed decades ago, when many people worked in factories. This ABC Test was written in the 1930s.

WHAT WE REALLY NEED:

a modern definition of who is an independent contractor.

We call on the U.S. Congress to support a modern test—such as the IRS or U.S. Department of Labor tests—to protect true independent contractors *and* misclassified employees.

Background

On January 1, 2020, California Assembly Bill 5 (AB5) went into effect. Its core provision is the ABC Test, written in the 1930s to distinguish an employee from an independent contractor. Proponents said AB5 would force bad-actor companies to hire independent contractors as employees.

That's not what happened. In February 2020, California's nonpartisan Legislative Analyst's Office predicted the number of independent contractors hired as employees would be "probably much smaller than the roughly 1 million contractors that AB5 applies to."¹ By September 2020, **so many independent contractors had lost work that a cleanup bill needed to be signed, bringing the number of exempted professions to more than 100.**²

To this day, there have been only a handful of cases reported in the press of California's law turning independent contractors into employees. **The ABC Test law does not work as proponents claim.**

The Problem with the ABC Test

Quite simply, the ABC Test is antiquated. **The ABC Test was written a century ago for an economy built on factory work.** Many legitimate, modern independent contractors cannot pass this ABC Test because **it outlaws working within a professional's area of expertise.**

Most Independent Contractors Are Properly Classified Now

Study after study—including U.S. government research—shows that **70% to 85% of independent contractors want to remain independent contractors**; that the majority are happier working this way; and that most earn as much as, or more than, they would in traditional jobs.³

In fact, a 2019 report by the IRS and U.S. Treasury Department showed "the largest share of workers with independent contractor income are those in the top quartile of earnings."⁴ Even during the Covid-19 pandemic, 60% of independent contractors said no amount of money would get them to go back to traditional employment.⁵

¹ "Staffing to Address New Independent Contractor Test," Legislative Analyst's Office, February 11, 2020

² "Newsom signs bill exempting dozens of jobs from AB5 rules for independent contractors," San Francisco Chronicle, September 4, 2020

³ "Contingent Workforce: Size, Characteristics, Earnings, and Benefits," U.S. Government Accountability Office, April 20, 2015; "Contingent and Alternative Employment Arrangements News Release," U.S. Bureau of Labor Statistics, June 7, 2018; "Illuminating the Shadow Workforce: Insights into the Gig Workforce in Businesses," ADP Research, February 2020; "Freelance Forward 2000," Edelman Intelligence/Upwork, September 2020; "Gig Economy and Self-Employment Report," Gallup/Quickbooks, 2019; "State of Independence in America 2019," MBO Partners, 2019; "We Polled 573 Freelancers About AB5. They're Not Happy," Contently, January 2020; "Women in the Independent Workforce, 2nd Annual Report," FreshBooks Cloud Accounting, 2019

⁴ "Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data," Katherine Lim, U.S. Department of the Treasury; Alicia Miller, Internal Revenue Service; Max Risch, University of Michigan; Eleanor Wilking, New York University, July 2019

⁵ Edelman Intelligence/Upwork

Efforts to Replicate California's AB5 Faced Enormous Opposition in Other Blue States

As the chaos of AB5 in California became clear, other states' lawmakers realized there was a major problem with the ABC Test law. Most notably, there was widespread citizen opposition in New Jersey and New York in late 2019 and early 2020. Despite the fact that Democrats control all aspects of government in these states, the outrage from constituents proved far stronger than proponents' arguments. **Facing huge opposition, AB5 copycat bills failed to advance on the East Coast.**

Opponents are Traditionally Members of the Democratic Party Base

In California, New Jersey and New York, the most vocal **opposition came primarily from women and people of color**—groups that traditionally comprise the Democratic Party base. People who escaped sexism, racism and ageism in the traditional, white, male-dominated workforce testified again and again that they succeeded as independent contractors and wanted to keep it that way.

In California, groups supporting a November 2020 ballot proposition against AB5 included the state's NAACP, National Action Network and Black Chamber of Commerce, which compared the economic effects of AB5 to the burning of "Black Wall Street" in Oklahoma a century ago: "California's efforts to shut down the gig economy in the name of protecting exploited workers is a tragic example of history repeating itself out of ignorance of the past."⁶

What Lawmakers Should Do Instead

There is agreement across the political spectrum that clarification is needed in the modern legal definition of an independent contractor to streamline federal and state laws.

The ideal legal definition would stop worker misclassification—in a way that can hold bad-actor companies accountable for exploitation—while at the same time respecting the will of the majority of people who choose independent contractor work and want to remain independent contractors.

We urge federal lawmakers to **base the modern definition of an independent contractor on the newly codified test from the U.S. Department of Labor, or on the IRS Test that originated in the 1980s** and that has been updated since then.

The USDOL and IRS Tests are reasonable and fair. **Legitimate independent contractors can pass these tests, and regulators can use these tests to hold bad-actor companies accountable.**

⁶ "Statement of California Black Chamber of Commerce on California Efforts to Shut Down Gig-Economy," June 25, 2020

About Fight For Freelancers

Fight For Freelancers is a grass-roots, nonpartisan, ad-hoc coalition that independent contractors from New Jersey formed in late 2019 to stop legislation similar to California's AB5 from spreading nationwide. The coalition now includes thousands of independent contractors from across the nation and all walks of life—doctors, interpreters, musicians, web developers and more. We frequently partner with groups in California to defend the right of independent contractors to operate their businesses.

Contact Us

@Freelancers_USA on Twitter

Contact form at: www.fightforfreelancersusa.com