NELP NATIONAL EMPLOYMENT LAW PROJECT

Rebecca Dixon
President and
Chief Executive Officer

National Office
PO Box 1779
New York, NY 10008
212-285-3025
www.nelp.org

July 23, 2025
Committee on Education & the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Re: HR 1319, Modern Worker Empowerment Act;
HR 4366 Save Local Business Act;
HR 1320 Modern Worker Security Act

Dear Members of the Committee,

On behalf of the National Employment Law Project (NELP), I write to express our strong opposition to three bills before the committee: HR 1319, the "Modern Worker Empowerment Act"; HR 1320, the "Modern Worker Security Act"; and HR 4366, the "Save Local Business Act."

NELP is a national nonprofit with more than fifty-five years of experience advocating for the labor and employment rights of low wage and unemployed workers. For decades, we have focused on the ways corporate work structures—such as calling workers independent contractors while controlling them with hidden algorithms—worsen income and wealth inequality, further segregate workers by race and gender, and harm the ability of workers to come together to negotiate with businesses over wages and working conditions. With our worker organizing partners, we advocate to ensure that all working people, regardless of who they are or what they do for a living, have access to our foundational labor and employment rights and protections.

The Modern Worker Empowerment Act Does Not Empower Workers; It Strips Them of Hard-Earned Rights

Representative Kiley's "Modern Worker Empowerment Act," despite its name, would not empower any workers in the modern economy. But it would dramatically narrow access to the fundamental protections of both the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA) by limiting who counts as an "employee" under each law, stripping workers of minimum wage, overtime, and child labor protections, and the right to engage in concerted action.

The FLSA's definition of employment is intentionally broad because Congress wanted the statute's protections to cover all people who work for someone else.[1] The broad scope of the law has been well established through decades of case law and rulemaking by the Department of Labor that determines who is an independent contractor. The NLRA, for its part, relies on the common law understanding of employment, which focuses on whether the hiring entity has the right to control the work.

---

[1] See, e.g., *United States v. Rosenwasser*, 323 U.S. 360, 362 (1945) ("A broader or more comprehensive coverage of employees . . . would be difficult to frame."). The *Rosenwasser* Court also quoted Senator Hugo Black's comments from the floor of the Senate during the bill debate, saying that the term "employee" had been given "the broadest definition that has ever been included in any one act." *Id.*, *citing* Sen. Rep. No. 884, at 6 (75th Cong., 1st Sess.).

The proposed definition of employment in the Modern Worker Empowerment Act, which focuses on whether an entity actually exercises significant control over the details of the way the work is performed, is much narrower than both definitions. It also raises more questions than it answers, such as what constitutes "significant" control.

If passed, the Modern Worker Empowerment Act would undermine the scope and effectiveness of the FLSA and the NLRA, empowering businesses, not the modern worker, and undermining the core protections of federal labor and employment law.

Rep. Comer's Joint-Employer Bill Would Enable Further Outsourcing and Subcontracting of Low-Wage Jobs

The "Save Local Business Act" would also limit low-wage workers' access to workplace rights, amending the joint-employer standards in both the NLRA and FLSA to make it much harder for workers at the end of a contractor chain to hold anybody but their immediate employer accountable for violations of the law.

For decades, businesses have used subcontracting arrangements—such as hiring workers through temporary staffing agencies—to avoid their responsibility to comply with the FLSA and NLRA, even as they have the power to control working conditions and the workers are integrated into their business. These contracting work-arounds were present when the FLSA and NLRA were passed in the 1930's, and versions of this outsourcing are used today by companies to evade baseline worker protections.

Today, trillion-dollar corporations like Amazon rely on these contracting arrangements to distance themselves from the workers powering their businesses and argue that they are not responsible for safeguarding the workplace rights of the workers integrated into their operations. Most of Amazon's last-mile delivery workers, for example, are directly employed by one of Amazon's thousands of essentially identical middlemen subcontractors. But Amazon controls nearly every detail of the work performed by both the middlemen subcontractors and their subcontracted delivery workers: determining daily routes drivers are assigned to and the number of deliveries to be completed each day; monitoring drivers through video surveillance and a smartphone app that can sense sudden motions and can register when a driver has spent too long making a particular delivery; and by effectively setting wages and doling out discipline (via the app) as it sees fit.[2] Increasingly, companies across the economy—including in labor-intensive and low-paid sectors like construction, home and health care, janitorial and building services, hotels and hospitality, and warehousing and logistics—use similar contracting arrangements to dodge accountability.

By narrowing the scope of coverage, HR 4366 would rubber-stamp some of these anti-worker practices, making it easier for corporations to avoid responsibility for violations of workers' rights under the FLSA and the NLRA. The bill would also hasten the race-to-the-bottom on labor standards, with businesses that treat their workers fairly finding it harder to compete.

The "Portable Benefits" Bill Does Not Provide Portable Benefits to Any Workers

Though framed as a "portable benefits" bill, Representative Kiley's other bill, the "Modern Worker Security Act," does not expand much-needed access to benefits—portable or not—for independent contractors. All the bill does is prohibit courts from considering a business's offer of a "portable benefit" to workers it hires

---

[2] See, e.g., NELP, *Comments on RIN 3142-AA21: Standard for Determining Joint-Employer Status Under the NLRA*, Dec. 2022, https://www.nelp.org/app/uploads/2023/10/NELP-Comment_NLRB-Joint-Employer-Rule_12.06.2022.pdf.

as independent contractors when determining whether those workers are in fact independent contractors or misclassified employees under federal law. In other words, this bill is about keeping businesses safe from being required to provide benefits to their workers, not about actually providing any alternative benefits to those workers.

And to be clear, there is a reason courts in many jurisdictions consider the provision of benefits to be a relevant consideration to determining employment status. When a business needs or wants to offer benefits to the workers whose labor it engages as "independent contractors", this suggests that the relationship is not business-to-business. It suggests that the worker is dependent on that hiring business and not running their own independent business, and that the hiring business has significant power, and perhaps control, over the relationship. In short, it is an indication that the worker may be misclassified as an independent contractor. Excluding this information from the legal analysis would further tip the scales in favor of businesses hoping to shed their employment obligations—harming workers who should be classified as employees.

NELP Supports True Portable Benefits, Which This Bill Fails to Provide

While existing employment law already guarantees certain benefits (including some that are portable, like Social Security and unemployment insurance) to workers classified as employees, we strongly support measures that go further toward making all benefits portable and available to all workers.

So, what are portable benefits? They are benefits that a person accrues by working and that follow the person from job to job; they are not tied to a particular employer. Portable benefits programs are usually funded by pooling contributions from employers and other businesses that engage with workers. Many operate as insurance programs that pool risk to cover costly emergencies, such as job loss or disability. Social Security, unemployment insurance, and some states' paid leave programs are common examples. Some workers who work multiple jobs or "gigs", such as backstage workers on film and TV sets, have union-negotiated portable benefits. Portable benefits increase worker mobility and bargaining power because they empower workers to leave one job for a better one without losing accrued benefits. They help people weather life's ups and downs and enhance their economic security over the long term.

Recently, app-based corporations have co-opted the term "portable benefits" for corporate programs that are neither "portable" nor "benefits." Corporations like Uber, Lyft, DoorDash, and Amazon classify their app-based workers as independent contractors in part so they can avoid providing employment-based benefits like workers' compensation, unemployment insurance, paid leave, and health insurance. Responding to worker demands for better working conditions and benefits, the corporations are offering stingy, second-rate stipends or savings accounts to app-based workers and calling them "portable benefits."[3] According to a report on DoorDash's much-touted "portable benefits savings pilot" program in Pennsylvania, app-based delivery workers made an average total contribution of only $6 to their "portable benefits" savings account.[4] Instead of legitimizing these fake portable benefits programs, policymakers should be bolstering and expanding insurance-based portable benefits systems and ensuring those benefits are available to everyone who works for someone else, including app-based workers.

---

[3] Shelly Steward, Portable Benefits Discourse Distracts from Gig Companies' Power Play, Aspen Institute, May 26, 2021, https://www.aspeninstitute.org/blog-posts/portable-benefits-discourse-distracts-from-gig-companies-power-play/.

[4] Nam D. Pham, A Promising New Approach to App-Based Work: DoorDash's Portable Benefits Savings Pilot Program in Pennsylvania. NDP Analytics, December 2024, at 6.

NELP supports policies that create a good-jobs economy,[5] including policies that would increase benefits for true independent contractors who run their own businesses, like increasing the tax credits available to individuals buying health insurance on exchanges and increasing contribution limits for IRAs. Unlike the so-called "benefits" programs designed by Uber and DoorDash, these policies give independent contractors—not the corporations that contract with them—the ability to choose the programs and benefits that suit them. These are policies that would truly empower independent contractors as they build their businesses. HR 1320 fails to do any of these things.

Accordingly, we urge you to oppose HR 1319, the "Modern Worker Empowerment Act", HR. 4366, the "Save Local Business Act", and HR 1320, the "Modern Worker Security Act."

Sincerely,

Laura Padin,
Director of Work Structures

[5] NELP, *What Is a Good-Jobs Economy?*, https://www.nelp.org/a-good-jobs-economy/#what-is-a-good-jobs-economy.