

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 1319**  
**OFFERED BY MR. KILEY OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Modern Worker Em-  
3 powerment Act”.

**4 SECTION 2. CRITERIA FOR DETERMINING EMPLOYEE STA-**  
**5 TUS.**

6       (a) CRITERIA FOR DETERMINING EMPLOYEE STATUS  
7 UNDER THE FAIR LABOR STANDARDS ACT.—Section 3(e)  
8 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
9 203(e)) is amended—

10           (1) by redesignating paragraphs (2), (3), and  
11           (4) as paragraphs (3), (4), and (5), respectively;

12           (2) in paragraph (1), by striking “paragraphs  
13           (2), (3), and (4)” and inserting “paragraphs (3),  
14           (4), and (5)”; and

15           (3) by inserting after paragraph (1) the fol-  
16           lowing:

1           “(2)(A) An individual shall be determined to be  
2           an independent contractor rather than an employee  
3           of another person if—

4                   “(i) such other person does not exercise  
5                   significant control over the details of the way  
6                   the work is performed by the individual, with-  
7                   out regard to any control the other person may  
8                   exercise over the final result of the work per-  
9                   formed; and

10                   “(ii) while performing such work, the indi-  
11                   vidual has the opportunities and risks inherent  
12                   with entrepreneurship, such as the discretion to  
13                   exercise managerial skill, business acumen, or  
14                   professional judgment.

15           “(B) The following factors may not be used in  
16           determining that an individual is an employee of an-  
17           other person:

18                   “(i) Whether such other person requires  
19                   the individual to comply with legal, statutory,  
20                   or regulatory requirements.

21                   “(ii) Whether such other person requires  
22                   the individual to comply with health and safety  
23                   standards that are more stringent than other-  
24                   wise applicable health and safety standards.

1           “(iii) Whether such other person requires  
2           the individual to carry insurance of any kind.

3           “(iv) Whether such other person requires  
4           the individual to meet contractually agreed-  
5           upon performance standards, such as dead-  
6           lines.”.

7   **SEC. 3. EMPLOYEE CLASSIFICATION UNDER THE NATIONAL**  
8           **LABOR RELATIONS ACT.**

9           Section 2(3) of the National Labor Relations Act (29  
10   U.S.C. 152(3)) is amended—

11           (1) by striking “(3) The term ‘employee’ shall”  
12           and inserting the following:

13           “(3)(A) The term ‘employee’ shall”; and

14           (2) by adding at the end the following:

15           “(B) Section 3(e)(2) of the Fair Labor  
16           Standards Act of 1938 (29 U.S.C. 203(e)(2))  
17           shall be used in determining whether an indi-  
18           vidual is an independent contractor or an em-  
19           ployee of another person.”.

20   **SEC. 4. APPLICATION.**

21           The amendments made by this Act shall apply with  
22           respect to a determination of whether an individual is an  
23           independent contractor or an employee of a person that  
24           is made on or after the date of enactment of this Act.

