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Anti-Independent Contractor Law AB5 Is Not Working in California; Other States and Congress Must Avoid the Same Devastating Mistake

Dramatic loss of income in California leaves independent contractors and small business owners nationwide fearful of similar approach to “worker misclassification” problem

February 3, 2020, California—When California’s AB5 went into effect on January 1, supporters promised the law would result in the reclassification of numerous independent contractors to full- and part-time workers with benefits. Instead, the law’s first month has proved a catastrophe for scores of independent contractors who have lost income, longtime clients and, in some cases, their entire livelihoods overnight. Despite the devastating effects of the law in California, lawmakers in other states are considering enacting similar legislation as Congress plans to vote on a federal version, referred to as the PRO Act (HR2474), this week.

The law purports to protect workers who are misclassified, but its clumsy wording harms thousands of independent contractors who wish to keep their thriving businesses. A wide variety of independent contractors, including journalists and writers, translators, musicians, pilates and yoga instructors, per diem nurses and many more have begun to experience the devastation that the law is causing.

“This misguided law is not only failing to work for writers and journalists, but it has also resulted in the loss of hundreds of thousands of dollars of income for approximately 56 percent of California Freelance Writers United’s more than 1,400 independent contractors,

small business owners and other members,” says Maressa Brown, founder and co-leader CAFWU. “Despite fitting the business-to-business criteria, many of our members continue to lose and be denied contracts, as companies decide that hiring an independent contractor in California is too legally risky.”

“AB5 is killing careers and forcing us to consider leaving this state we love,” says Randy Dotinga, board member and former president of the American Society of Journalists & Authors, which has joined with the National Press Photographers Association to sue California over AB5’s constitutionality. “We see the damage grow every day as our clients blacklist us or restrict our work. Some clients are unnecessarily requiring us to incorporate at a cost of hundreds of dollars a year, while others are so bewildered by the requirements that they’re unwilling to let us take advantage of the exemption at all.”

As AB5 wreaks havoc in California, legislators in other states considering AB5-style legislation, including New Jersey, New York, Massachusetts, Illinois and Washington, are starting to understand the drastic effects in California, and the constitutional challenges in multiple federal lawsuits, as a cautionary tale for the rest of the nation to avoid.

“When we sit down with lawmakers here in New Jersey, they realize that following in California’s footsteps would be a disaster for writers, musicians, interpreters, teachers and countless other professions,” says Kim Kavin, co-founder of Fight for Freelancers New Jersey. “Women and Americans older than 55 are especially threatened, because they tend to choose independent contractor work. We are grateful that strong leaders in the New Jersey Senate and Assembly are now working with us to find a better path than the reintroduced version of this disastrous legislation, called NJ S863.”

“In New York, our representatives have been actively targeting apps like Uber, Handy and Lyft,” said Halley Bondy, co-founder of Fight for Freelancers New York. “It is critical that true, non-exploited independent contractors have a seat at the table as our state, and now the nation, continues to pursue this precarious course of action. Without our representation during this process, it is very likely that many of our livelihoods will be destroyed, just like they have been destroyed in California.”

As the federal version of AB5, the PRO Act (HR2474), comes to a vote in the House of Representatives this week, studies show that independent contractors in these states and all across the nation would prefer to run their businesses as they always have rather than being forced into full- or part-time employment.

A December 2019 poll by Contently found:

- **88 percent** of independent contractors oppose the law
- **75 percent** say they prefer freelancing over a full-time job
- **87 percent** say they do not trust lawmakers to represent their best interests

The sixth annual “Freelancing in America” survey released October 3, 2019 by the Freelancers Union and Upwork showed:

- **57 million people, or 35 percent** of the U.S. workforce, are freelancers, up from around 53 million in 2014
- Freelance income currently makes up almost **5 percent** of the country’s GDP, or close to \$1 trillion
- **46 percent** of freelancers can’t take full-time, traditional jobs for personal reasons, such as health issues and caregiving for sick or aging family members or young children to care for at home.

Today, independent contractors across the country voiced their opposition to AB5 by overwhelming the #AB5works and #disruptinequality hashtags that the California Labor Federation had intended to promote California’s law. The more careers that are lost, the more independent small business owners from multiple states plan to work together to make the truth known.

“These laws are based on a series of factors called the ABC test, which was created during the Great Depression and no longer fits how millions of people choose to work today,” Brown says. “We look forward to more state- and federal-level lawmakers hearing and addressing the concerns of today’s independent contractors as we continue to work with them to find better solutions.”

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