

Statement for the Record

by

Coalition to Promote Independent Entrepreneurs



Payroll Fraud: Targeting Bad Actors Hurting Workers and Businesses

Before the

Senate Committee on Health, Education, Labor and Pensions
Subcommittee on Employment and Workplace Safety

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The Coalition to Promote Independent Entrepreneurs (the “Coalition”) appreciates the opportunity to submit testimony concerning the important issue of independent contractors and the economic effect of companies doing business with them. The Coalition consists of industry associations, businesses and independent contractors that share a common interest in preserving the legal status accorded independent contractors, and in the creation of economic opportunities for all individuals, whether they offer their services as independent contractors or employees.

The Coalition absolutely supports the proper classification of workers, and the proper and timely compliance by independent contractors with their federal, state and local tax reporting and payment obligations. Moreover, it supports government policies aimed at enhancing these objectives, provided that such policies do not undermine the rights of independent contractors and their clients to do business with each other, or the economic opportunities created by the legitimate use of independent contractors.

I. Individuals Benefit from the Ability to Be Self-Employed

Individuals choose self-employment for a variety of different reasons that are very personal to them. Examples include:

- To be one’s own boss;
- To be able to work with a wide variety of different clients and thereby maintain an high level of professional technical expertise;
- As a bridge between the loss of a job and the next job;
- To maximize control over one’s financial destiny;
- To ensure that the individual reaps the financial rewards of his or her hard work;
- To earn more money than would be possible by working as an employee, e.g., as a commissioned sales representative or as a consultant;
- To generate supplemental income to fund a family vacation;
- To generate additional income to save for retirement;
- To be able to work from home and meet family obligations; and
- To be able to work a flexible, seasonal or sporadic schedule.

Individuals highly value the freedom to achieve these objectives by working as an independent contractor. Surveys of independent contractors consistently report a high degree of satisfaction with their self-employed status.¹

II. Companies Benefit from Having Access to Self-Employed Individuals

Companies also benefit from the ability to do business with independent contractors. For example, if a company has a short-term need for a specific type of service that the company’s personnel does not possess, the ability to engage independent contractors who possess that skill and are able to promptly commence work on the project can be of immense value to the company.

¹ See, Jeffrey A. Eisenach, *The Role of Independent Contractors in the U.S. Economy*, at p. 37 (December 2010), Navigant Economics, <http://www.naviganteconomics.com/docs/Role%20of%20Independent%20Contractors%20December%202010%20Final.pdf> (the “Navigant Economics Study”) (citing multiple studies for this proposition).

Similarly, for a company that engages individuals to perform services away from its premises and has found it impractical to supervise or monitor their performance, a business model that has proven effective is for the company to contract with dedicated entrepreneurial independent contractors who will self-manage their own performance and consistently perform at a high level in order to grow their own business and retain and attract clients.

In some cases, the decision whether to do business with independent contractors is based on a philosophical viewpoint. An example is sales. Some companies operate with an employee sales force, while other direct competitors contract with independent-contractor sales professionals. This decision commonly turns on whether (i) the company believes it knows best how to sell and that the best strategy for maximizing sales results is for the company to train an employee sales force; or (ii) the company believes the best strategy for maximizing sales results is to contract with independent-contractor sales professionals and unleash their entrepreneurial zeal and creativity.

All of these examples illustrate a decision to do business with independent contractors that is driven by a desire to maximize performance and achieve legitimate business objectives.

III. Self-Employment is Not Anti-Competitive

The contention that a company doing business with independent contractors enjoys an unfair competitive advantage relative to a different business that chooses to perform such work with its own employees creates a very slippery slope. A fundamental defect with this type of contention is that there is no discernible limiting principle, as a similar argument could be made with respect to any business decision that could create a disparity in terms of cost or efficiency. For example, should a start-up family owned business that pays its family members relatively low salaries and provides them no benefits beyond what the law requires be prohibited from competing against a publicly held corporation that pays its employees generous salaries plus a wide array of employee benefits? Should a company be prohibited from implementing a new technology that will enable it to perform more efficiently when its competitor chooses not to?

Moreover, such a contention is woefully inequitable to the independent contractor who is seeking to do business with company clients. If an individual decides to work as a self-employed individual, there is nothing anticompetitive or otherwise inappropriate about the individual doing so – or about a company engaging the individual to perform a project or accomplish an objective. A government policy that impedes a company’s ability to do business with legitimate independent contractors is highly inequitable to enterprising and entrepreneurial independent contractors.

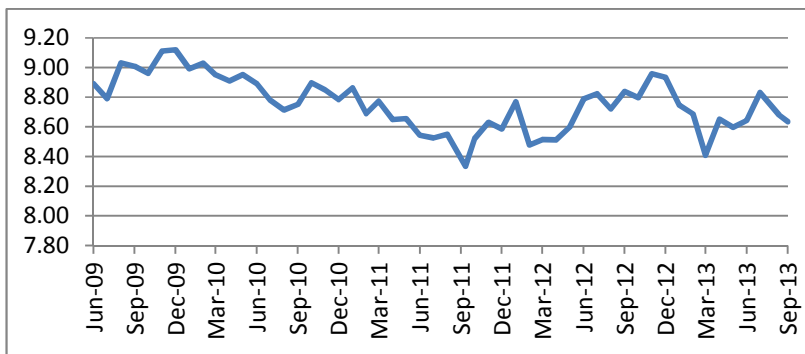
IV. No New Burdens Should be Imposed on Companies that Do Business with Self-Employed

While the Coalition certainly does not in any way support or condone “payroll fraud,” it nonetheless believes it critically important to keep the payroll-fraud issue completely separate from the “competitive” issue associated with one company operating a business model that is more efficient or cost-effective than a competitor. Conflating the two can lead to economically harmful policy prescriptions.

In this regard, the Coalition would oppose the imposition of any additional administrative or regulatory burdens on companies that do business with legitimate independent contractors. The current legal and regulatory environment governing worker classification already has had a disruptive impact on these relationships.

During the past several years, certain companies that traditionally operated on an independent-contractor model have changed their model, terminated the independent contractors and offered them employment – due principally if not entirely to the current legal and regulatory environment. The best interests of the economy are not served when companies change their business model in the direction of a less efficient one, solely to reduce their legal and regulatory risks.²

The adverse impact of the current legal and regulatory environment is also corroborated by government data. The number of self-employed individuals, as reported monthly by the Bureau of Labor Statistics, has been gradually declining over the past several years. The following is a graph illustrating the number of “self-employed workers, unincorporated,” as reported each month in *The Employment Situation*, Table A-8, commencing June 2009, http://www.bls.gov/schedule/archives/empsit_nr.htm. The “y” axis represents the number of “self-employed workers, unincorporated,” in millions.



² The Navigant Economics Study found that curtailing independent contracting would:

- Reduce job creation and small business formation. Independent contractors start businesses and create jobs. Of the 10.3 million independent contractors in the most recent Bureau of Labor Statistics survey, nearly 2.4 million had one or more paid employees, with the vast majority employing five or fewer workers.
- Reduce competition and increase prices. By reducing the importance of economies of scale, independent contracting allows small businesses to compete with larger ones, increasing competition and lowering prices for consumers.
- Create sector specific disruptions. Independent contracting is a primary business model in a number of important industries, including construction, emergency medicine, financial advice, timber harvesting and transportation. Limitations on independent contracting could create serious economic disruptions in these and other industries.
- Produce a less flexible and dynamic work force. Independent contracting allows both firms and workers to respond to changes in the economy, reducing “structural” unemployment. Empirical studies show independent contracting facilitates workers’ re-entry into the workforce after being laid off.

Navigant Economics Study at p. ii.

The foregoing graph reveals that not since February 2010 has the number of self-employed unincorporated workers exceeded nine million. Moreover, the graph illustrates a disturbing downward trend of self-employment.

V. Conclusion

The Coalition respectfully urges that the Congress not impose any additional administrative or regulatory burdens on companies that do business with self-employed individuals. We believe the current regulatory and legal environment for these relationships is more than adequate to discourage worker misclassification, as the environment has had the unfortunate impact of causing companies to eschew even legitimate independent-contractor relationships due to legal and regulatory concerns. Such an outcome only exacerbates the financial pressures for those legitimate self-employed individuals who are seeking client opportunities to expand their operations and support their families in these difficult economic times.