For Immediate Release
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FLSA's 80th Anniversary Marks Time to Update Its Definition of "Employee"

Washington, D.C., June 25, 2018 – On this day 80 years ago, the Fair Labor Standards Act ("FLSA") was signed into law by President Franklin D. Roosevelt. The FLSA is one of several New Deal statutes, which also include the Social Security Act ("SSA") and the National Labor Relations Act ("NLRA"), that were enacted during the 1930s to regulate the relationship between an employer and its "employees."

The meaning of the term "employee" has always been of immense importance to these New Deal statutes, because the term defines their scope of coverage. Early U.S. Supreme Court decisions interpreting the term "employee" for these purposes adopted an "economic realities" test.[1] The Congress responded by amending the SSA and the NLRA to statutorily define the term "employee" under a "common-law" test, which has become the predominant test defining the term for purposes of federal statutes. But the Congress has not yet amended the FLSA.

More recently, the U.S. Supreme Court interpreted the term "employee" for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA") and adopted a common-law definition.[2] The statutory definition for the term "employee" contained in ERISA[3] is *identical* to the statutory definition for the term contained in the FLSA. Notwithstanding this more-recent decision, courts continue to apply an "economic realities" test to define "employee" status for purposes of the FLSA. Thus, the term "employee," while having identical definitions in two federal statutes, is interpreted in a dramatically different way for purposes of each.

The 80th anniversary of the FLSA is an opportune time to remedy this glaring conflict by statutorily adopting a common-law definition for the term "employee" and thereby harmonizing the definition of the term for purposes of federal statutes. The *Harmonization of Coverage Act of 2017*, H.R. 3825, introduced by Representatives Diane Black (R-TN) and Elise Stefanik (R-NY), would accomplish this by amending the FLSA to adopt a common-law definition for "employee."

The *Coalition to Promote Independent Entrepreneurs* urges all who support harmonization to contact their Members of Congress and urge prompt enactment of H.R. 3825. The Coalition also urges the U.S. Department of Labor to consider remedying this conflict by issuing regulations that adopt a common-law definition for the term "employee" for purposes of the FLSA.

To learn more about this issue or to join this effort to modernize the FLSA, please send us an email at info@iecoalition.org or visit our website at www.iecoalition.org.

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[1] *NLRB v. Hearst Publications*, 322 U.S. 111 (1944) (for purposes of the NLRA); *United States v. Silk*, 331 U.S. 704, 716–18 (1947) (for purposes of the SSA); and *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947) (for purposes of the FLSA).
[2] *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992).
[3] ERISA Section 3(6), defines the term "employee" to mean "any individual employed by an employer."