

118TH CONGRESS
1ST SESSION

H. R. 5513

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2023

Ms. STEFANIK (for herself, Mr. KILEY, and Mrs. STEEL) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CRITERIA FOR DETERMINING EMPLOYEE STA-**
4 **TUS.**

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

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

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

6 (3) by inserting after paragraph (1) the fol-
7 lowing:

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

11 “(i) such other person does not exercise
12 significant control over the details of the way
13 the work is performed by the individual, with-
14 out regard to any control the other person may
15 exercise over the final result of the work per-
16 formed; and

17 “(ii) while performing such work, the indi-
18 vidual has the opportunities and risks inherent
19 with entrepreneurship, such as the discretion to
20 exercise managerial skill, business acumen, or
21 professional judgment.

22 “(B) The following factors may not be used in
23 determining that an individual is an employee of an-
24 other person:

1 “(i) Whether such other person requires
2 the individual to comply with legal, statutory,
3 or regulatory requirements.

4 “(ii) Whether such other person requires
5 the individual to comply with health and safety
6 standards that are more stringent than other-
7 wise applicable health and safety standards.

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

10 “(iv) Whether such other person requires
11 the individual to meet contractually agreed-
12 upon performance standards, such as dead-
13 lines.”.

14 **SEC. 2. EMPLOYEE CLASSIFICATION UNDER THE NATIONAL**
15 **LABOR RELATIONS ACT.**

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

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

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

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

22 “(B) Section 3(e)(2) of the Fair Labor
23 Standards Act of 1938 (29 U.S.C. 203(e)(2))
24 shall be used in determining whether an indi-

1 vidual is an independent contractor or an em-
2 ployee of another person.”.

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