

118TH CONGRESS
1ST SESSION

H. R. 781

To amend the Fair Labor Standards Act of 1938 to clarify the status
of an independent contractor, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2023

Mr. FERGUSON (for himself, Mrs. MILLER of West Virginia, Mr. MIKE GARCIA of California, Mr. AUSTIN SCOTT of Georgia, Mr. OWENS, Ms. HAGEMAN, Mr. COLE, and Mr. MCCLINTOCK) 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 to clarify
the status of an independent contractor, 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. SHORT TITLE.**

4 This Act may be cited as the “Guaranteeing Inde-
5 pendent Growth Act” or the “GIG Act”.

1 **SEC. 2. DEFINITION OF INDEPENDENT CONTRACTOR.**

2 Section 3(e) of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 203(e)) is amended by adding at the end the
4 following new paragraph:

5 “(6)(A) The term ‘employee’ does not include an indi-
6 vidual who performs services for another person as an
7 independent contractor, as determined by the Secretary.
8 In making such determination, the Secretary shall con-
9 sider that an individual is likely to be performing services
10 for another person as an independent contractor if such
11 individual—

12 “(i) exercises substantial control over key as-
13 pects of the performance of such services; and

14 “(ii) has the opportunity to earn profits or
15 incur losses based on the exercise of initiative or
16 management of investment by such individual.

17 “(B) In any case in which the Secretary determines
18 that the considerations described in subparagraph (A) are
19 not dispositive as to whether an individual is performing
20 services for another person as an independent contractor,
21 the Secretary may also consider that the individual is like-
22 ly to be performing such services as an independent con-
23 tractor if such services—

24 “(i) require specialized training or skills that
25 such person does not provide; and

26 “(ii) are performed—

1 “(I) on a continuous basis (including on a
2 seasonal basis); and

3 “(II) as part of an integrated unit.

4 “(C) In making any determination under this para-
5 graph as to whether an individual is performing services
6 for another person as an independent contractor, the Sec-
7 retary shall only consider actual practices between the in-
8 dividual and such person, without regard to—

9 “(i) any contractual agreement or any other ex-
10 pectation of either party that is not regularly met in
11 the course of performing such services; and

12 “(ii) any services that the individual performs
13 that—

14 “(I) are not for such person; and

15 “(II) are not substantially similar to the
16 services that such individual performs for such
17 person.”.

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