

Coalition to Promote Independent Entrepreneurs

IECoalition.org • (202) 659-0878

January 7, 2020

The Honorable Tim Scott
U.S. Senate
Washington, DC 20510

Re: *Modern Worker Empowerment Act*

Dear Senator Scott:

On behalf of the Coalition to Promote Independent Entrepreneurs, a national coalition of organizations, companies, and independent entrepreneurs that support an individual's right to do business and work as an independent entrepreneur, we are writing to express our strong support for S. 2973, the *Modern Worker Empowerment Act*. The undersigned thank you for introducing this bill.

The ingenuity of the American economy has created technological innovations that enable individuals with merely an idea and a computer or smartphone to start a business. Despite low barriers to entry for independent entrepreneurship, Bureau of Labor Statistics data reveal that the number of independent entrepreneurs relative to the civilian labor force has declined over the last ten years. Enclosed is a graph reflecting BLS data in this regard.

One factor contributing to this decline is our nation's outdated and inconsistent labor laws. At this time, more than ten different tests define the term "employee" for purposes of federal and state statutes. This patchwork of different definitions for the same term creates significant uncertainty for independent entrepreneurs and their clients. This uncertainty, in turn, creates an unfair playing field that discriminates against these independent entrepreneurs relative to their incorporated competitors, which stifles economic growth and denies the American Dream to hard working entrepreneurs.

The *Modern Worker Empowerment Act* would liberate twenty-first century entrepreneurs by updating the definition of the term "employee" for purposes of the Fair Labor Standards Act ("FLSA") and conforming it to the other New Deal statutes enacted during the 1930s that years ago replaced the antiquated "economic realities" test with a common-law definition for the term.

S. 2973 would also harmonize the definition of "employee" for purposes of all federal statutes, by reconciling the FLSA with more recent United States Supreme Court decisions¹ holding that a common-law test is the proper test for the term "employee" for purposes of (i) statutes that do not define the term, and (ii) statutes, such as the FLSA, that define the term with a definition that is circular.

¹ *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992), and *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440 (2003).

A standard definition of “employee” would be beneficial to all stakeholders. It would provide much needed certainty to independent entrepreneurs and their clients, while also enabling government agencies to more efficiently ensure proper worker classification.

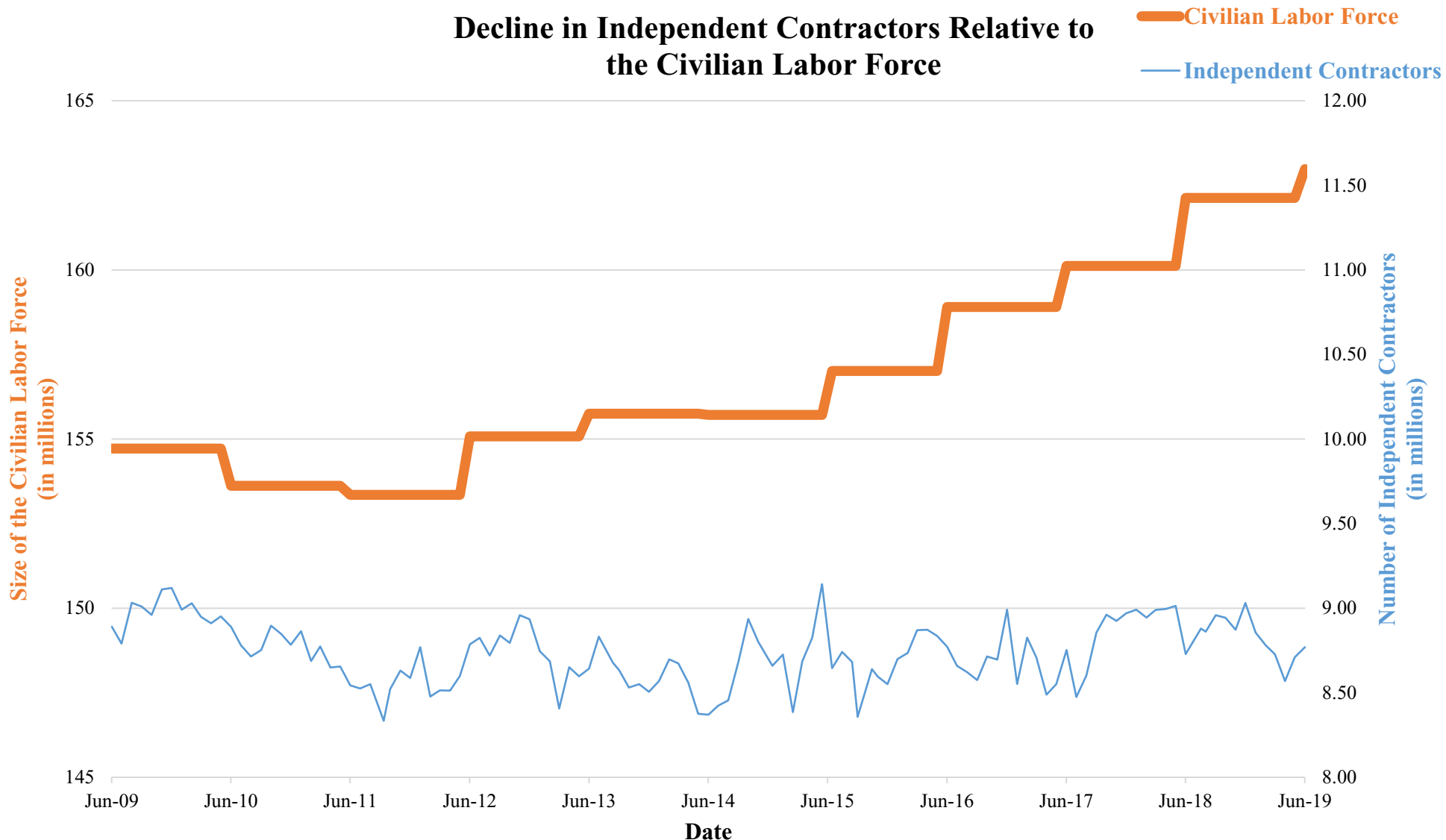
We thank you for your leadership on this important issue by introducing S. 2973 to bring the FLSA into the 21st century.

Sincerely,

Enclosure

cc: The Honorable Marsha Blackburn

Decline in Independent Contractors Relative to the Civilian Labor Force



BLS Definitions

Labor Force: The labor force includes all persons classified as employed or unemployed in accordance with the definitions contained in this glossary.

Employed Persons: Persons 16 years and over in the civilian noninstitutional population who, during the reference week, (a) did any work at all (at least 1 hour) as paid employees; worked in their own business, profession, or on their own farm, or worked 15 hours or more as unpaid workers in an enterprise operated by a member of the family; and (b) all those who were not working but who had jobs or businesses from which they were temporarily absent . . . whether or not they were paid for the time off or were seeking other jobs. Each employed person is counted only once Excluded are persons whose only activity consisted of work around their own house . . . or volunteer work for religious, charitable, and other organizations.

Unemployed Persons: Persons aged 16 years and older who had no employment during the reference week, were available for work, except for temporary illness, and had made specific efforts to find employment sometime during the 4-week period ending with the reference week. Persons who were waiting to be recalled to a job from which they had been laid off need not have been looking for work to be classified as unemployed.

Definitions available at: BLS Information (<https://www.bls.gov/bls/glossary.htm#C>).

Size of the Civilian Labor Force source data available at: Labor Force Statistics from the Current Population Survey, Civilian Labor Force (<https://data.bls.gov/cgi-bin/surveymost?ln>).

Number of Independent Contractor source data available at: Bureau of Labor Statistics, Seasonally Adjusted Data, THE EMPLOYMENT SITUATION, Table A-8.

116TH CONGRESS
1ST SESSION

S. 2973

To amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2019

Mr. SCOTT of South Carolina (for himself and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

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 “Modern Worker Em-
5 powerment Act”.

6 **SEC. 2. AMENDMENTS TO THE FAIR LABOR STANDARDS**

7 **ACT OF 1938 TO HARMONIZE THE DEFINITION**

8 **OF EMPLOYEE.**

9 (a) DEFINITION OF EMPLOYEE.—Section 3(e)(1) of
10 the Fair Labor Standards Act of 1938 (29 U.S.C.

1 203(e)(1)) is amended by inserting before the period the
2 following: “, as determined under the usual common law
3 rules (as applied for purposes of section 3121(d) of the
4 Internal Revenue Code of 1986)”.

5 (b) DEFINITION OF EMPLOY.—Section 3(g) of the
6 Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)) is
7 amended by inserting “an employee” after “permit”.

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