



**IWF Public Comment Regarding
Independent Contractor Status under the Fair Labor Standards Act
Regulatory Information Number (RIN) 1235-AA34**

The Independent Women's Forum submits the following comment in support of the proposed rule, Independent Contractor Status under the Fair Labor Standards Act.

Today's workplace is vastly different from generations ago. No longer is a 9-5 job necessarily the ideal path to a middle-class life. Being tethered to a desk does not guarantee productivity and, increasingly, work does not begin or end with the punching of the clock. The outdated employer-employee model of work has given way to an array of work arrangements that allow workers to maximize flexibility. Although independent contracting has a long history, technology has created new employment opportunities through the gig economy for those with specialized skills and others without any specialized skills or training at all.

Women find independent contracting appealing because of the flexibility, autonomy, and freedom it provides. Many women seek out employment arrangements that allow them to balance competing priorities that demand flexible schedules such as caregiving for children or aging parents.

Independent contracting offers avenues of employment that allow women to remain attached to the labor force and to advance in their careers while meeting personal obligations. Importantly, they retain control over their labor and time and they can negotiate the pay and schedules that meet their unique circumstances.

Flexibility is a driving force for women in the gig economy. According to a 2018 survey, flexibility is important to **94 percent** of working women and 61 percent of these women prefer to have an independent relationship with their chosen companies versus working for that company as an employee.

Independent contract work is not just a choice for some women, it is a necessity. According to *Freelancers in America 2019*, a report by the Upwork and the Freelancers Union, **46 percent** of freelancers say they depend on contract work because their personal circumstances prevent them from working in traditional jobs. This includes family obligations, but also health and other issues. In our work, we have come across survivors of crimes that needed to be able to work around medical appointments and treatments or away from others as they worked through severe trauma. In spite of these challenges and thanks to nontraditional work opportunities, they were still able to secure enough income to sustain themselves and their families.

Many independent contractors are compensated well. According to the freelancer [survey](#), a majority (60 percent) of them said they earned more after leaving their job as an independent contractor. Over half of these freelancers said their incomes from freelance work outpaced what they previously earned as an employee within just one year.

The critique that big companies purposefully misclassify workers as independent contractors to exploit them and avoid paying them the wages and benefits they deserve misses workers' agency and the reality that many workers intentionally weigh the expectations and compensation offered by both work arrangements and prefer what independent contracting offers.

While independent contractors do not receive benefits such as paid leave, healthcare, and unemployment insurance as employees do, they choose to trade those benefits for flexibility. That is often a sensible choice that they should have the right to make. Married women often have healthcare coverage through their spouse's employer. Others purchase their own benefits and factor those costs into what they charge clients.

Labor policies have a tremendous impact on women and their preferences for independent contracting should not be discounted by policymakers. It is very concerning that lawmakers at the state and federal levels are advancing policies to severely restrict independent contracting. Laws such Assembly Bill 5 (AB5) in California and bills such as the federal Protecting the Right to Organize (PRO) Act aim to reclassify workers, especially those in the gig economy, as employees unless they can meet stringent standards. These efforts have codified the ABC test, which establishes that a worker must be an employee of a firm unless she (A) is free from control and direction, (B) performs her labor outside the usual course of business; and (C) is engaged in an independently established business of the same nature that involved the service.

When AB5 went into effect at the beginning of 2020, thousands of individuals across the state of California suffered as a result of this law. Workers lost contracts, reliable income, recurring work, and were forced to make heart wrenching decisions about whether to outsource caregiver responsibilities to try to adapt to the requirements faced by full-time employees.

One of those workers is Nancy, an independent contractor optometrist for 18 years who worked part-time to allow her time to raise her two children. After AB5 became law she said it cut her income by 30 percent overnight. Another devastated worker is Jennifer. Independent contract work comprised three quarters of the income for this writer and yoga instructor, but that was slashed after AB5 became law as clients choose to contract with others in her field who lived out of state. These are real women we have interviewed and profiled at Independent Women's Forum, as part of our Chasing Work campaign, an effort to study the real-world impact of harmful workplace regulations and policies like AB5. Sadly, Nancy and Jennifer's experience is representative of many more women and men affected by the law.

Efforts to restrict independent contracting would hit the gig economy particularly hard. The ridesharing industry estimates that labor costs will rise by 20-30 percent. Those companies would

likely institute shifts, schedule drivers in advance, and reduce the number of drivers during slow hours or in less busy markets. Under all of those scenarios, drivers would lose flexibility and income. This would be untenable for the students, mothers, and retirees who have found stable employment through ridesharing and delivery services, while also leaving customers with fewer and more expensive options for these services, which are often particularly important for the elderly and those with mobility issues.

With over ten million jobs eliminated because of the pandemic, workers are more in need than ever of more opportunities to earn money in a manner that works with their unique situations. Now is the time to lower barriers to job creation and increase the diversity of job opportunities, not limit people to an antiquated model of all-or-nothing employment.

As the movement to restrict independent contract work spreads to other states and may potentially become the law of the land across America, workers need an advocate for flexible work. Through this proposed rule, the Department of Labor is supporting a diversity of work arrangements and pushing back against the imposition of a one-size-fits-all employer-employee model.

By establishing a reasonable and flexible standard for which workers should be classified as independent contractors under the Fair Labor Standards Act, the DOL is adding much-needed clarity that workers, firms, and judges can look to for guidance.

While we understand that this proposed rule will not supersede state laws or other federal statutes, it is an important signal that labor policy should embrace freedom and flexibility in the workplace.

We support this proposed rule and look forward to it being finalized expeditiously.