Changing Economy Brings New Questions about IC Status

Proposed legislation aims to end ambiguity and prevent unintended consequences for independent contractors

The clearly evolving environment in the American workplace will undoubtedly create amendments in existing statutes or generate new legislation says Adolfo Franco, chief counsel of the Direct Selling Association (DSA). Those efforts, he emphasizes, "do not change what we are."

In anticipation this conflict would only intensify as the conversation about the changing American workforce and the gig economy developed, the DSA is looking at existing statutes to ensure clarity around correctly classifying direct sellers as independent contractors across all types of legislation.

Additionally, the association is proactively seeking correlations between existing statutes that could further the protections afforded the independent contractor. They found just such an opportunity in a 1983 Fair Labor Standards Act (FLSA) statutory extension, where the status of direct sellers as independent contractors was confirmed for federal tax purposes under 26 USC 3508 (b)(2) of the Internal Revenue Service (IRS) Code.

As a result, Tim Walberg (R-Michigan) has introduced the Preserving Direct Seller Independence Act of 2018, or H.R. 7029. This legislation aims to clarify the role of "direct sellers as independent contractors under FLSA, consistent with the IRS Code."

Essentially, HR 7029 would ensure correct classification under the umbrella of the FLSA to bring consistency within federal statute.

Franco says, "We have a changing gig economy. We have a whole bunch of things that in the past just didn't exist. With the emergence of the "Ubers" of the world, there really is a legitimate debate about this new animal out there."

He adds, "No industry wants a bill introduced that may have unintended consequences and affect their business model. It's more difficult to undo or change it once there's movement in a certain direction."

Franco explains that the gray area of whether people are classified as subcontractors or employees is always a topic the DSA watches out for in legislation. Occasionally, he says, "regulation would unintendedly bring us into that fold."

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Congressman Walberg, according to Franco, has accumulated extensive knowledge of the industry over the years in his role as a Michigan representative, and this makes him well-suited to host the bill.

Walberg says, "Direct selling provides a big boost to Michigan's economy. Last year alone, more than 390,000 people in Michigan worked as direct sellers, generating $712 million in sales. By clarifying the law, we can ensure the necessary certainty that will open doors to greater entrepreneurial opportunities."

Franco says, "Because there's often confusion, those less informed might think that the FLSA would apply to direct sellers," he continues, saying that they wanted to ensure that in this legislation there is no ambiguity whatsoever.

Creating this clarification also makes clear that since direct sellers are not employees, issues regarding wage are inapplicable. Wage disputes are always immaterial in discussions about independent contractors. Franco points out that "issues arising from the employee-employer relationship don't apply to us."

Currently, there is no other impending legislation or movement at the state or federal level that would negatively affect direct sellers. H.R. 7029 was presented late in the legislative schedule and will have to be reintroduced. Franco says, "It was a good way to put the marker out now. It's much easier than starting anew next year."

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