

Protecting the Boundaries of the Employer Relationship

A Federal Policy Brief on Joint Employment, Independent Work, and Business Autonomy

"Authority and accountability should travel together. Employment responsibility should follow actual, meaningful authority over a worker and workplace, while legitimate business relationships, contractual standards, technical assistance, and voluntary benefits should not independently create an employment relationship."

16

BILLS ANALYZED

4

POLICY AREAS

119th

CONGRESS

BBI

FRAMEWORK

Executive Summary

A growing share of federal labor policy turns on a deceptively simple question:

Who is the employer?

The answer increasingly affects franchises, contractors, subcontractors, independent professionals, gig workers, direct sellers, staffing relationships, and businesses that provide benefits or other support to individuals who are not traditional employees.

Several pending bills in the 119th Congress approach this question from fundamentally different directions.

One approach seeks to preserve clear boundaries between independent businesses and workers by tying employment responsibility to **actual, meaningful control over employment decisions**.

Another approach would broaden employment relationships by considering indirect influence, reserved authority, economic dependence, or other factors even where traditional employer control is absent.

The distinction has significant implications for small businesses, entrepreneurship, workforce flexibility, regulatory certainty, and employer liability.

The central policy principle examined in this brief: Authority and accountability should travel together. Employment responsibility should follow actual, meaningful authority over a worker and workplace, while legitimate business relationships, contractual standards, technical assistance, and voluntary benefits should not independently create an employment relationship.

This principle does not eliminate worker protections or shield sham contracting arrangements. Where an entity genuinely exercises employer-level control, corresponding responsibility may appropriately follow.

The objective is not less employment law.

It is clearer employment law that places accountability where actual authority exists.

The Policy Problem

Federal employment law has traditionally distinguished among several kinds of relationships:

- employer and employee;
- business and independent contractor;
- franchisor and franchisee;
- contractor and subcontractor;
- client and professional service provider; and
- business and other independent businesses.

Those distinctions matter because employer status carries substantial legal obligations under federal wage-and-hour, labor, tax, discrimination, benefits, and workplace laws.

Over time, however, the legal boundaries separating these relationships have become increasingly uncertain.

The joint-employer standard under the National Labor Relations Act has shifted across presidential administrations. Independent-contractor standards have similarly changed through agency rulemaking and litigation.

The Result

Businesses and workers cannot easily structure long-term relationships when the legal definition of employment changes depending on which administration controls a federal agency.

For franchises and other small businesses, this uncertainty can influence:

Investment decisions

Contracting relationships

Training and assistance

Benefit offerings

Compliance costs

Litigation exposure

Congress is now considering multiple bills that would move these questions from administrative interpretation into federal statute.

A Framework for Employer-Relationship Policy

A durable federal policy framework should recognize six principles.

1 Authority and Accountability

Employment responsibility should generally follow meaningful authority over core employment decisions. Relevant factors include control over:

- hiring; firing; compensation;
- schedules; discipline; supervision; and
- the manner in which work is performed.

2 Independent Businesses Remain Independent

A commercial relationship between two businesses does not necessarily create an employment relationship. Franchising, subcontracting, vendor relationships, staffing arrangements, and professional-service agreements often involve contractual standards and coordination. That coordination should be distinguished from control of another company's employees.

3 Independent Work Is a Legitimate Form of Work

Individuals may choose independent work because it provides entrepreneurial opportunity, flexible schedules, control over clients, geographic independence, multiple income sources, or the ability to build a business.

Employment policy should preserve legitimate employee protections without treating traditional employment as the only valid model of work.

4 Assistance Should Not Automatically Create Employment

Businesses routinely provide training, safety standards, technology, brand requirements, performance standards, retirement opportunities, health-related benefits, and other resources.

Such assistance should not, standing alone, determine employment status. Otherwise, law creates an incentive to **provide less support in order to reduce legal risk**.

5 Substance Matters More Than Labels

Legal clarity should not become a mechanism for disguising actual employment relationships. A contract identifying someone as an independent contractor does not necessarily make that person independent if the facts demonstrate extensive employer control. A sound framework protects legitimate independent relationships while preserving enforcement against sham arrangements.

6 Statutory Certainty Is Preferable to Regulatory Whiplash

Basic questions concerning who qualifies as an employer or employee affect millions of economic relationships. Where possible, Congress can provide greater stability by establishing clear statutory standards rather than leaving foundational definitions subject to repeated changes in agency interpretation.

THE LEGISLATIVE LANDSCAPE

Pending federal legislation can be organized around four related questions:

BUSINESS TO BUSINESS

When do two independent businesses become joint employers?

BUSINESS TO WORKER

When does an independent worker become an employee?

BUSINESS TO BENEFITS

Can benefits or assistance be provided without changing employment status?

GOVERNMENT TO EMPLOYMENT STATUS

How broadly should federal law redefine employer and employee relationships?

Federal Legislative Scorecard

Biblical Business Index Five Freedoms framework. Priority score measures significance of a proposal, not whether the legislation expands or restricts employer freedom.

Legislation	Primary Freedom	Score	Priority	Policy Effect
American Franchise Act, H.R. 5267 / S. 3525	Workforce	23	Critical	Protects franchise independence
Save Local Business Act, H.R. 4366	Workforce	25	Critical	Establishes broader joint-employer clarity
Modern Worker Empowerment Act, H.R. 1319	Workforce	24	Critical	Protects legitimate independent contracting
Modern Worker Security Act, H.R. 1320	Workforce	23	Critical	Separates benefits from classification
Unlocking Benefits for Independent Workers Act, S. 2210	Workforce	23	Critical	Creates benefits safe harbor
Independent Retirement Fairness Act, S. 2217	Workforce	20	High	Expands retirement options for independent workers
Direct Seller and Real Estate Agent Harmonization Act, H.R. 3495	Workforce	19	High	Protects established independent occupations
Modern Worker Empowerment Act, S. 2228	Workforce	21	High	Advances common-law classification standard
Association Health Plans Act, H.R. 2528 / S. 1847	Healthcare	26	Critical	Expands health-plan options for qualifying independent workers
21st Century Worker Act, S. 4010	Workforce	24	Critical	Creates broader federal classification architecture
RURAL Healthcare Act, H.R. 8347	Healthcare	20	High	Protects temporary independent healthcare practice
Employee Rights Act, H.R. 4154	Workforce	25	Critical	Includes direct-control and contractor provisions
Retirement Savings for Americans Act, H.R. 2696 / S. 1526	Workforce	23	Critical	Includes contractor-classification safe harbor
Protecting Independent Contractors from Discrimination Act, H.R. 10035	Workforce	21	High	Extends employee-style statutory treatment into contracting relationships
Gig Is Up Act, H.R. 9114	Economic	16	High	Applies employer-style tax treatment to certain contractor relationships
PRO Act, H.R. 20 / S. 852	Workforce	25	Critical	Broadens joint-employer and employee classifications

26 BBI Score (0-100 scale) Critical = Highest significance High = Significant impact

Business-to-Business Relationships

When Does One Business Become Another Business's Employer?

American Franchise Act

23

H.R. 5267 / S. 3525

CRITICAL

The American Franchise Act addresses joint employment specifically within the franchise model. A franchisor could qualify as a joint employer when it possesses and exercises **substantial direct and immediate control** over essential employment terms such as wages, benefits, hours, hiring, firing, discipline, supervision, and direction.

The legislation distinguishes those employment decisions from ordinary franchise activities such as maintaining brand standards, establishing operating requirements, providing training, requiring safety standards, protecting trademarks, recommending staffing practices, and providing management tools.

A franchisor's responsibility as an employer should depend primarily on actual employment control rather than the existence of a franchise relationship.

Save Local Business Act

25

H.R. 4366

CRITICAL

The Save Local Business Act addresses the same issue more broadly. Under the proposal, one employer would become the joint employer of another employer's workers when both directly, actually, and immediately exercise significant control over essential employment conditions.

The legislation therefore reaches relationships beyond franchising, including contractors, subcontractors, vendors, staffing companies, service providers, and other businesses operating through contractual relationships.

This legislation establishes a clearer distinction between commercial influence and employment authority. Two companies may depend heavily on one another economically and still remain legally separate businesses.

Business-to-Worker Relationships

When Does Independent Work Become Employment?

Modern Worker Empowerment Act

H.R. 1319 | BBI Score: **24** | **Critical**

H.R. 1319 would establish a statutory employee-versus-independent-contractor standard under both the Fair Labor Standards Act and National Labor Relations Act. The framework focuses on the degree of control over how work is performed and whether the worker experiences entrepreneurial opportunity and risk.

The bill identifies factors that would not independently establish employee status: legal compliance requirements, enhanced health or safety standards, insurance requirements, and contractual performance standards.

A business can require a contractor to meet the terms of a contract without necessarily controlling the contractor as an employer controls an employee.

Modern Worker Empowerment Act

S. 2228 | BBI Score: **21** | **High**

The Senate proposal uses a more traditional common-law approach to employment classification under the Fair Labor Standards Act. While narrower than H.R. 1319, it reflects the same underlying concept: control should remain central to determining whether a worker is an employee or an independent contractor.

Direct Seller and Real Estate Agent Harmonization Act

H.R. 3495 | BBI Score: **19** | **High**

This legislation would align federal labor treatment of qualified direct sellers and real estate agents with their existing treatment under federal tax law. Where Congress has already recognized certain occupations as operating through legitimate independent-business structures for tax purposes, conflicting federal employment classifications can create unnecessary uncertainty.

21st Century Worker Act

S. 4010 | BBI Score: **24** | **Critical**

The 21st Century Worker Act takes a much broader approach. It attempts to create a federal framework for determining worker status across multiple federal statutes rather than relying on separate definitions under different labor and employment laws.

The proposal establishes categories involving mandatory employee status, mandatory independent-contractor status, and circumstances in which workers may elect a classification.

The same person can potentially be classified differently under different federal statutes. A more uniform federal system could substantially improve predictability.

At the same time, rewriting employment definitions across numerous statutes carries significant legal consequences and requires careful evaluation of how each underlying law would interact with the new classification framework.

RURAL Healthcare Act

H.R. 8347 | BBI Score: **20** | **High**

The RURAL Healthcare Act addresses temporary physicians and advanced-care practitioners serving healthcare facilities. Qualifying practitioners could receive independent-contractor treatment under the FLSA and NLRA for temporary assignments meeting statutory requirements.

Policy Significance

Healthcare workforce shortages, particularly in rural communities, have increased reliance on temporary and traveling professionals. Independent professional arrangements can expand access to care while allowing physicians and other practitioners greater flexibility.

A durable classification framework should nevertheless continue to distinguish genuine professional independence from arrangements in which a facility exercises ordinary employer-level control.

SECTION III PREVIEW

Business-to-Benefits Relationships

One of the most important emerging issues in employment policy involves the relationship between worker benefits and worker classification. Current legal uncertainty can create an unintended incentive: a company may hesitate to provide benefits to an independent worker because those benefits could later be cited as evidence that an employment relationship existed.

Business-to-Benefits Relationships

Can Independent Workers Receive Benefits Without Becoming Employees?

Modern Worker Security Act

H.R. 1320 | BBI Score: **23** | **Critical**

The legislation provides that offering certain portable or employment-style benefits cannot be considered when determining whether an individual is an employee.

A business should not have to choose between providing greater security to independent workers and preserving the independent nature of the relationship. Separating voluntary benefits from employment classification could encourage greater private-sector innovation in worker benefits.

Unlocking Benefits for Independent Workers Act

S. 2210 | BBI Score: **23** | **Critical**

The Senate proposal creates a federal safe harbor so the provision of certain benefits or contributions toward benefits is not used to determine worker classification. Potential benefits include arrangements that resemble benefits commonly provided to traditional employees.

Benefits are not the same thing as employment control.

Independent Retirement Fairness Act

S. 2217 | BBI Score: **20** | **High**

This legislation would expand retirement-plan opportunities available to independent workers while preserving independent-contractor status. Traditional employees commonly gain retirement advantages through workplace plans. Independent workers should not necessarily have to surrender their independent status simply to obtain access to comparable retirement structures.

Association Health Plans Act

H.R. 2528 / S. 1847 | BBI Score: **26** | **Critical**

The Association Health Plans Act would broaden the ability of qualifying associations to sponsor health plans, including participation by certain self-employed individuals.

Healthcare is one of the areas where traditional employment historically carries a significant advantage because large employers can pool risk and negotiate coverage. Expanding association-based options can help separate access to health coverage from the traditional employer-employee relationship. The legislation also raises broader ERISA, governance, solvency, and regulatory questions that extend beyond employment classification itself.

Retirement Savings for Americans Act

H.R. 2696 / S. 1526 | BBI Score: **23** | **Critical**

The larger bill would create a new federal retirement structure. For purposes of this policy brief, its most relevant provision establishes a classification safe harbor for independent contractors who participate in qualifying retirement arrangements.

Participation would not itself determine whether the worker is an employee.

Policy Significance

This is another application of the principle that access to benefits and employment status need not be legally inseparable.

SECTION IV

Broader Labor-Law Reform: Employee Rights Act

Employee Rights Act

H.R. 4154 | BBI Score: **25** | **Critical**

The Employee Rights Act is a comprehensive labor-law proposal containing several provisions directly relevant to employer boundaries. Among them are:

- a direct-control joint-employer standard;
- independent-contractor protections; and
- provisions addressing technical assistance provided within franchise systems.

Policy Significance

The bill demonstrates that questions involving joint employment and worker classification are increasingly becoming part of broader federal labor-law reform.

Because the legislation contains numerous provisions outside this particular issue area, its overall effects extend beyond the boundaries analyzed in this brief.

Competing Models

The alternative approach to employer classification

PRO Act

H.R. 20 / S. 852 | BBI Score: **25** | **Critical**

The PRO Act represents the clearest alternative approach to employer classification. Its joint-employer framework permits consideration of:

- direct control;
- indirect control;
- reserved authority to control; and
- control actually exercised.

Its independent-contractor provisions also rely on an ABC-style test that includes whether the worker performs services outside the usual course of the hiring entity's business.

POLICY RATIONALE FROM SUPPORTERS

Supporters argue that corporations can exercise substantial influence over workplace conditions without directly making traditional employment decisions. A narrow direct-control test may allow companies to avoid responsibility by outsourcing employment functions while retaining significant practical power. That concern is legitimate and illustrates why substance must remain part of any classification analysis.

POLICY CONCERN

A standard based heavily on indirect influence or unexercised authority can expand employer liability beyond entities that actually manage the workers involved, making it more difficult to distinguish contractual oversight from employment supervision, or genuine independent contracting from traditional employment.

Section V: Competing Models (continued)

Protecting Independent Contractors from Discrimination Act of 2026

H.R. 10035 | BBI Score: **21** | **High**

This bill addresses a different but related problem. It seeks to extend protections contained in several federal civil-rights statutes to individuals working under independent contracts.

Should independent status eliminate protection against intentional unlawful discrimination?

The bill's mechanism uses employee-style statutory treatment to extend those protections. A potentially cleaner approach would distinguish between two separate questions:

1. What protections should independent contractors receive?
2. Are those individuals employees?

Congress can answer the first question without necessarily changing the answer to the second. Any expansion involving Title VII and related laws also requires careful preservation of existing religious-liberty protections and statutory exemptions.

Gig Is Up Act

H.R. 9114 | BBI Score: **16** | **High**

The Gig Is Up Act focuses on very large businesses that contract with substantial numbers of nonemployees. Rather than broadly changing FLSA or NLRA classification, the proposal applies certain employer-style payroll-tax consequences to qualifying contractor compensation.

If a worker remains legally independent, to what extent should the contracting business nevertheless be treated like an employer for tax purposes?

This approach could create a hybrid system in which a worker remains an independent contractor for some purposes while the contracting business assumes selected employer obligations for others. Such hybrid classifications may increase complexity rather than resolve it.

The Four Boundaries

The legislative debate summarized through four relationships

BUSINESS ↔ BUSINESS

QUESTION

When do two independent companies become joint employers?

POLICY PRINCIPLE

Employment liability should follow shared employment authority, not merely the existence of a contractual or franchise relationship.

KEY LEGISLATION

American Franchise Act • Save Local Business Act • Employee Rights Act

BUSINESS ↔ WORKER

QUESTION

When does an independent worker become an employee?

POLICY PRINCIPLE

Classification should reflect the real relationship, with substantial weight given to meaningful control and genuine entrepreneurial independence.

KEY LEGISLATION

Modern Worker Empowerment Act • 21st Century Worker Act • Direct Seller Act • RURAL Healthcare Act

BUSINESS ↔ BENEFITS

QUESTION

Does providing benefits create employment?

POLICY PRINCIPLE

Voluntary benefits, retirement assistance, health coverage, or portable benefits should not independently establish employer status.

KEY LEGISLATION

Modern Worker Security Act • Unlocking Benefits Act • Independent Retirement Fairness Act • Association Health Plans Act • Retirement Savings for Americans Act

GOVERNMENT ↔ STATUS

QUESTION

How broadly should government redefine employer and employee relationships?

POLICY PRINCIPLE

Federal law should protect workers from genuine abuse while preserving legitimate distinctions among employees, independent workers, and independent businesses.

KEY LEGISLATION

PRO Act • Gig Is Up Act • Protecting Independent Contractors from Discrimination Act

Economic and Workforce Implications

The employer-definition debate affects more than legal terminology. It shapes decisions about:

Entrepreneurship

Franchising and independent contracting provide pathways into business ownership. Uncertain liability can make those models more difficult to expand.

Small-Business Formation

A broad joint-employer standard can expose larger businesses to liability for practices of smaller affiliated companies, encouraging greater centralized control rather than independent local ownership.

Benefits Innovation

If offering benefits increases classification risk, businesses have an incentive not to offer them. Safe harbors can permit experimentation with portable benefits suited to a mobile workforce.

Regulatory Compliance

Changing definitions force businesses to repeatedly reevaluate contracts, organizational structures, staffing models, and compliance systems. Statutory definitions can provide greater durability.

Worker Protection

Clear boundaries also benefit workers. Workers should be able to identify which entity is responsible for their wages, workplace conditions, supervision, and legal protections.

A Balanced Standard

Protecting the boundaries of the employer relationship does not require choosing between business freedom and worker protection. A durable framework can preserve both.

IT CAN RECOGNIZE THAT:

- genuine employees deserve the protections attached to employment;
- genuine independent workers should retain the freedom to work independently;
- independent businesses should not inherit liability merely because they contract with one another;
- franchisors can protect their brands without necessarily controlling local employees;
- benefits can be made available without automatically triggering reclassification; and
- businesses that actually exercise employer authority remain accountable for that authority.

The resulting standard is neither employer avoidance nor automatic employment expansion.

It is responsibility based on reality.

CONCLUSION

Where Should the Boundary Be Drawn?

The pending federal debate over joint employment, independent contracting, franchising, portable benefits, and gig work is not a series of unrelated labor-policy disputes. Each issue turns on the same fundamental question:

Where should the legal boundary of the employment relationship be drawn?

The most durable answer is one grounded in actual authority. Employment law works best when responsibility follows the entity making meaningful employment decisions, independent workers remain free to operate independently, businesses can contract with one another without automatically merging their legal responsibilities, and worker protections remain available where true employer control exists.

Authority determines accountability.

Assistance should not automatically create employment.

Independence should be genuine, clearly defined, and legally protected.

CHRISTIAN EMPLOYERS ALLIANCE

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