

SEC. 101. DEFINITIONS.

(a) JOINT EMPLOYER.—Section 2(2) of the National Labor Relations Act ([29 U.S.C. 152\(2\)](#)) is amended by adding at the end the following: “Two or more persons shall be employers with respect to an employee if each such person codetermines or shares control over the employee’s essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: *Provided*, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.”.

(b) EMPLOYEE.—Section 2(3) of the National Labor Relations Act ([29 U.S.C. 152\(3\)](#)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”

Nothing in this section shall be construed to affect the status of any individual having the status of a non-employee or of an independent contractor under any other Federal or State law, including any individual deemed a non-employee under 26 U.S.C. § 3508(a) or subject to any State laws or regulations governing licensed professions.

[29. U.S.C. §152(3)]

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status a non-employee or of an independent contractor under any other Federal or State law (including any individual described as a non-employee in in 26 U.S.C. § 3508(a) or any State laws regulating licensed professions), or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [[45 U.S.C. 151 et seq.](#)], as amended from time to time, or by any other person who is not an employer as herein defined.

H.R. 842: SEC. 308. RULE OF CONSTRUCTION.

~~The amendments made under this Act shall not be construed to affect the definitions of “employer” or “employee” under the laws of any State that govern the wages, work hours, workers’ compensation, or unemployment insurance of employees.~~

Nothing in this Act shall be construed to

(1) affect the definitions of “employer,” “employee,” “non-employee,” “independent contractor” or “employment” under the laws of any State including, but not limited to, any law that governs wages, work hours, workers’ compensation, unemployment insurance, state income tax withholding, disability insurance, waiting penalties, reimbursement of business expense, or employment security, or that contains a presumption of independent contractor status; or

(2) affect the definitions of “employee,” “non-employee,” “independent contractor,” or similar terms, for professions subject to State licensing laws and/or regulations.