

Senator Mike Lee Introduces the Direct Seller and Real Estate Agent Harmonization Act

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On September 30, Utah Senator Mike Lee introduced the Direct Seller and Real Estate Agent Harmonization Act, with Utah Senator John Curtis as co-sponsor. It is welcome news for two industries that operate through millions of independent contractors in the U.S. and that have long managed around inconsistent rules, not only across the states but within different agencies at the federal level.

The Worker Classification Challenge

Worker classification remains one of those corners of the law that is needlessly pesky for most businesses and existential for the handful that rely on armies of gig economy workers. One would think that regulatory clarity and consistency on this question would bring significant efficiency to regulators and businesses both, but historically that has not happened. Instead, in response to a growing gig economy, states have been considering, and in some cases passing, more restrictive tests, and in California the Private Attorneys General Act (PAGA) has generated a steady stream of multi-plaintiff classification claims against companies.

State level treatment of direct sellers and real estate agents

At the state level, each state adopts its own worker classification tests for wage and hour, unemployment insurance and workers' compensation purposes. Some states specifically carve out direct sellers as an established category of independent contractors. Some carve out real estate agents in the same way. Many do neither.

Federal treatment of the two industries

At the federal level, where Senator Lee's bill would apply, the challenge has also been inconsistency across agencies. The two agencies with the primary interest in the question are the IRS (enforcing federal employment tax rules) and the Department of Labor (enforcing the Fair Labor Standards Act). Each uses a different worker classification test altogether.

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On the IRS side, clarity came for these two industries many years ago. In 1982, Congress added Section 3508 to the Internal Revenue Code to provide that direct sellers and licensed real estate agents are “statutory nonemployees” for federal tax purposes if they are paid on sales rather than hours and have a written agreement providing that they will not be treated as employees. The DOL, however, has treated these large populations of independent contractors in a less clear, and less consistent, way, with its rulemaking shifting back and forth on how worker status is determined. In 2024, the DOL replaced its prior rule with a six-factor totality of the circumstances rule. Under a new administration, DOL then told its investigators in May 2025 to stop applying the 2024 rule, and in February 2026 proposed to rescind it and return to a version of the 2021 framework. A final rule could issue later this year.

What the bill would do

The bill amends the Fair Labor Standards Act to harmonize it with the tax code provisions described above. If enacted, a direct seller or qualified real estate agent who meets the Section 3508(b) requirements would not be an “employee” for FLSA purposes. It is a narrow fix. The bill does not amend the NLRA, does not preempt state law, and does not address gig workers generally. (Note that Senator Lee’s broader [21st Century Worker Act](#), introduced in March of this year, would address the larger classification question.)

The House version of this bill, [H.R. 3495](#), introduced by Rep. Kevin Kiley (I-Calif.) in May 2025, cleared the House Committee on Education and Workforce in September 2025 on a 19 to 16 vote. It currently is on the House calendar awaiting floor action.

Expect these two industries to monitor developments closely with hope of finding some uniformity at least at the federal level.

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