

Testimony in SUPPORT of H-7788 concerning the misclassification of workers
House Committee on Labor
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The Economic Progress Institute strongly supports Representative Shanley’s H-7788 to classify workers properly in Rhode Island by instituting the national standard of the ABC test to distinguish between employees and independent contractors.

This legislation addresses a critical problem: employers treating workers like employees without extending the benefits and protections employees have. Such benefits and protections include the following:

- access to unemployment insurance
- anti-discrimination protections
- wage and hour protections
- the right to organize
- workers’ compensation

According to the ABC test (<https://www.epi.org/publication/misclassification-the-abc-test-and-employee-status-the-california-experience-and-its-relevance-to-current-policy-debates/>), for an individual to truly be an independent contractor and not an employee, the following three conditions must be fulfilled:

- (A) The work is done without the direction and control of the employer.
- (B) The work is performed outside the usual course of the employer’s business.
- (C) The work is done by someone who has their own, independent business or trade doing that kind of work.

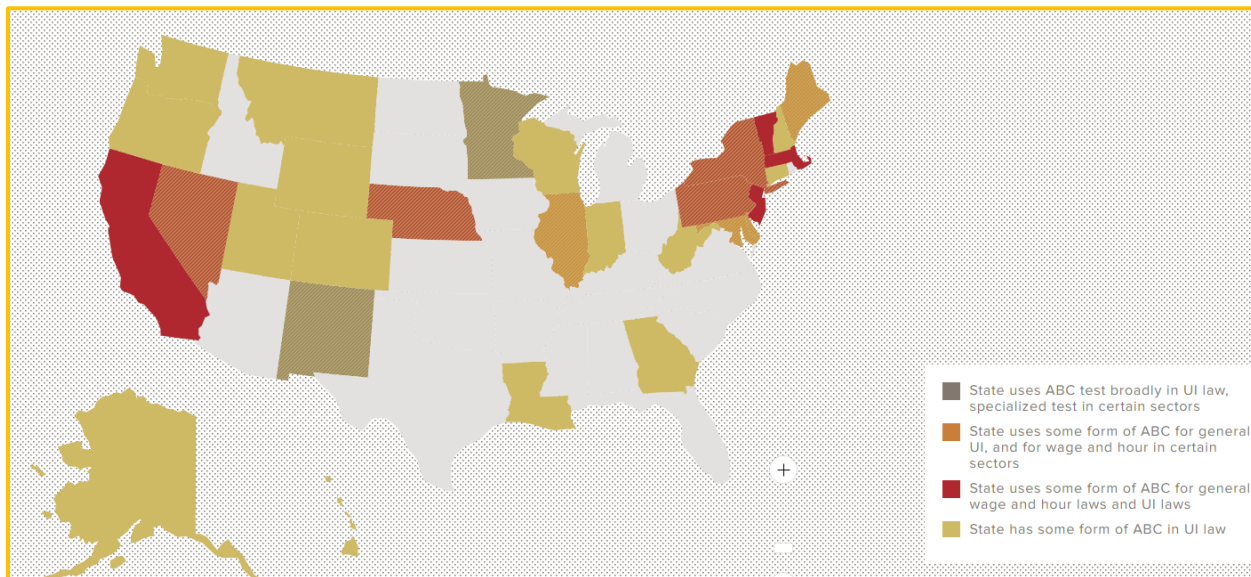
However, so called “gig workers” consistently fail to meet any, let alone all, of these conditions:

- (A) For Uber or Lyft drivers for example, the work of the drivers is clearly directed by the employer.
- (B) Furthermore, the work of the drivers is the business of the employers, not a contracted service outside of the companies’ regular business.
- (C) Finally, the drivers have not set up independent businesses, but are essentially working for these companies.

Clearly, then, Uber and Lyft drivers, like so many other workers misclassified as independent contractors, should be recognized under Rhode Island state law as employees. This would entitle them, for example, to claim unemployment insurance when appropriate – and require their employers to pay into the unemployment insurance system. Indeed, such employers

unfairly shift the burden for payroll taxes onto employers who properly classify their employees.

As the following map from the National Employment Law Project demonstrates, Rhode Island is the only state in the entire Northeastern United States lacking any form of the ABC test (<https://www.nelp.org/campaign/turning-gig-jobs-into-good-jobs/>):



Rhode Island should join the rest of the states in New England and beyond by establishing in statute a presumption that such workers are identified as employees and placing upon employers the burden of proof to show that workers are actually independent contractors. Ideally, there would be federal legislation (such as the Protecting the Right to Organize (PRO) Act) to incorporate this into federal labor law, but for now, Rhode Island should codify this.

The Economic Progress Institute urges you to advance H-7788 to the floor for a vote.