



Legislation Text

File #: Res 1285-2020, **Version:** *

Res. No. 1285

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation clarifying the test for classification of workers as independent contractors or employees by extending the test set forth in Articles 25-B and 25-C of the New York Labor Law to apply to all workers.

By Council Members Lander, Kallos, Van Bramer, Louis and the Public Advocate (Mr. Williams)

Whereas, Workers classified as independent contractors lack a significant number of basic worker protections that are granted to employees, including, but not limited to, healthcare subsidies, unemployment benefits, pensions, overtime pay, paid parental or sick leave, and guaranteed minimum wage; and

Whereas, Misclassification of employees as independent contractors is frequently practiced by businesses seeking to avoid the burden of paying benefits to employees and to avoid paying unemployment and social security taxes on the wages of a worker that is classified as an employee; and

Whereas, According to a report by The New School Center for New York City Affairs, an estimated 850,000 low-paid independent contractors in New York State may be misclassified and should properly be classified as employees; and

Whereas, According to a joint report from Rockbridge Associates and Fiverr, over 550,000 independent contractors reside in the New York City metropolitan area as of 2018, which is the highest number of independent contractors of any city in the United States; and

Whereas, Low-paid independent contractors can be subject to extreme economic insecurity, with median annual earnings of \$20,000, and with 1 in 4 workers on Medicaid and 1 in 5 who are uninsured; and

Whereas, Workers who are misclassified have not shared in New York State's minimum wage increases; and

Whereas, Workers classified as independent contractors face the additional burden of being responsible for the employer’s share of taxes, as well as self-employment tax; and

Whereas, in New York City, 2 out of 3 low-paid independent contractors who are likely to be misclassified are people of color; and

Whereas, Misclassified workers who receive work through a “digital marketplace” constitute at most 20 percent of workers misclassified as independent contractors in New York State; and

Whereas, The State of New York has adopted the New York State Construction Industry Fair Play Act (Labor Law Article 25-B), and the New York State Commercial Goods Transportation Industry Fair Play Act (Labor Law Article 25-C), both of which create a presumption of employment that places the burden of proof on employers to classify workers as independent contractors; and

Whereas, New York’s presumption of employment in construction and commercial trucking establishes that an employer may only label a worker as an independent contractor if it can demonstrate that (1) the individual is free from control and direction in performing the job, both under the contract and in fact, (2) the service must be performed outside the usual course of business for which the service is performed, and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue; and

Whereas, The presumption of employment codified in the New York State Construction Industry Fair Play Act has helped to mitigate the industry’s crisis of misclassification, with the number of independent contractors declining by 14 percent over the past decade while the number of payroll employees rose 9 percent; and

Whereas, Ensuring protections for workers by classifying them as employees rather than independent contractors allows them a greater degree of financial security, as well as access to necessary benefits that enhance their quality of life; and

Whereas, Codifying a generally applicable presumption of employment for classification of workers as

independent contractors or employees, as already applicable to certain industries pursuant to the aforementioned provisions of the New York Labor Law, would extend employer protections to the many workers in the state who are improperly classified as independent contractors; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation clarifying the test for classification of workers as independent contractors or employees by extending the test set forth in Articles 25-B and 25-C of the New York Labor Law to apply to all workers.

LS #12631
04/02/20
TWN