

117TH CONGRESS
2D SESSION

H. R. 8442

To provide workers with schedule flexibility and choice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2022

Mr. CUELLAR (for himself, Ms. STEFANIK, and Mrs. STEEL) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide workers with schedule flexibility and choice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Worker Flexibility and
5 Choice Act”.

6 **SEC. 2. WORKER FLEXIBILITY AGREEMENTS.**

7 Section 3 of the Fair Labor Standards Act of 1938
8 (29 U.S.C. 203) is amended—

1 (1) in subsection (e), by adding at the end the
2 following:

3 “(6)(A) Except as provided in subparagraph (B), the
4 term ‘employee’ does not include any individual who has
5 entered into a worker flexibility agreement with an entity
6 during the duration of such worker flexibility agreement.
7 “(B) For the purposes of sections 3(l), 12, and 13(c),
8 and paragraphs (3) and (4) of section 15(a), the term ‘em-
9 ployee’ includes an individual described in subparagraph
10 (A).”; and

11 (2) by adding at the end the following:

12 “(z)(1) WORKER FLEXIBILITY AGREEMENT.—The
13 term ‘worker flexibility agreement’ means an arrange-
14 ment—

15 “(A) that is knowingly and voluntarily entered
16 into by an entity and an individual before work be-
17 gins, in accordance with paragraph (2);

18 “(B) under which—

19 “(i) the individual retains the rights pro-
20 vided to employees in connection with other
21 workplace laws, including those relating to indi-
22 vidual employee privacy rights, nondiscrimina-
23 tion, nonharassment, nonretaliation, safety, and
24 leave under the Family and Medical Leave Act,
25 in accordance with applicable laws;

1 “(ii) the individual retains the freedom and
2 flexibility to reject offers the entity provides to
3 the individual to provide services or results
4 without negatively impacting the individual’s
5 opportunity to provide services to the entity in
6 the future during the arrangement’s term; and

7 “(iii) the individual retains the right to
8 perform the same services or results as the
9 services or results provided under the arrange-
10 ment to competing businesses, unless part of a
11 bargained-for non-solicitation sales agreement;

12 “(C) that specifies that the individual entering
13 into the agreement—

14 “(i) will not be treated as an employee for
15 Federal tax purposes with respect to services
16 performed pursuant to the agreement during
17 the period during which the agreement is in ef-
18 fect; and

19 “(ii) has not been treated as an employee
20 for Federal tax purposes with respect to the
21 same or similar services performed at any time
22 during the calendar year in which such agree-
23 ment is entered into by the individual and the
24 entity;

1 “(D) that may include other requirements, if
2 agreed to by the individual and the entity;

3 “(E) that is affirmed in writing and that—

4 “(i) states the entity has offered, and the
5 individual has chosen to enter into, an arrange-
6 ment whereby the individual is not subject to
7 the minimum wage and overtime protections of
8 this Act and is not treated as an employee
9 under the Internal Revenue Code of 1986 (and
10 related State and local laws); and

11 “(ii) includes a statement of all of the
12 rights and requirements described subpara-
13 graphs (B) and (C); and

14 “(F) that is for a defined period of time and
15 that may be renewed or renegotiated by the indi-
16 vidual and the entity following its expiration in ac-
17 cordance with the requirements of this section.

18 “(2) KNOWING AND VOLUNTARY AGREEMENT.—For
19 the purposes of this subsection, an agreement described
20 in paragraph (1) shall not be considered to be entered into
21 knowingly and voluntarily unless the agreement—

22 “(A) is written in plain language in a manner
23 that can be understood by the average individual eli-
24 gible to participate;

1 “(B) specifically refers to rights or claims
2 under this Act;

3 “(C) advises the individual in writing of their
4 right to consult with others, including an attorney,
5 prior to signing the agreement;

6 “(D) confirms that the individual has been pro-
7 vided with a written summary of health, pensions,
8 insurance (including accident or other occupational
9 health products), training, and certification pro-
10 grams, or other benefits, if any, that the individual
11 is eligible for while the agreement is in effect; and

12 “(E) includes the signature of the individual
13 and a representative of the entity.”.

14 **SEC. 3. SUPERSEDURE AND VALIDITY.**

15 Section 18 of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 218) is amended by adding at the end, the
17 following:

18 “(c) SUPERSEDURE AND VALIDITY OF WORKER
19 FLEXIBILITY AGREEMENTS.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided in paragraph (2), with respect to any indi-
22 vidual who has entered into a worker flexibility
23 agreement, the requirements of subsections (e)(6)
24 and (z) of section 3 shall supersede all Federal,
25 State, and local laws relating to wages and other

1 monies paid, hours worked, documentation and rec-
 2 ordkeeping, and applicable taxes, benefits, and con-
 3 tributions insofar as they may apply to the employ-
 4 ment relationship between the individual and the en-
 5 tity covered under the worker flexibility agreement.

6 “(2) REVOCATION.—A worker flexibility agree-
 7 ment shall be valid, irrevocable, and enforceable, ex-
 8 cept upon such grounds as exist at law or equity for
 9 the revocation of any contract.”.

10 **SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 11 **OF 1986 AND ERISA.**

12 (a) TREATMENT UNDER INTERNAL REVENUE CODE
 13 OF 1986.—

14 (1) IN GENERAL.—Chapter 25 of the Internal
 15 Revenue Code of 1986 is amended by inserting after
 16 section 3508 the following new section:

17 **“SEC. 3508A. TREATMENT OF SERVICES PERFORMED**
 18 **UNDER WORKER FLEXIBILITY AGREEMENTS.**

19 “(a) GENERAL RULE.—For purposes of this title, in
 20 the case of services performed pursuant to a worker flexi-
 21 bility agreement—

22 “(1) the individual performing such services
 23 shall not be treated as an employee; and

24 “(2) the person for whom such services are per-
 25 formed shall not be treated as an employer.

1 “(b) WORKER FLEXIBILITY AGREEMENT.—For pur-
 2 poses of this section, the term ‘worker flexibility agree-
 3 ment’ has the meaning given such term under section 3(z)
 4 of the Fair Labor Standards Act of 1938 (29 U.S.C.
 5 203(z)).”.

6 (2) CLERICAL AMENDMENT.—The table of sec-
 7 tions for chapter 25 of such Code is amended by in-
 8 serting after the item relating to section 3508 the
 9 following new item:

“Sec. 3508A. Treatment of services performed under worker flexibility agree-
 ments.”.

10 (b) ERISA.—Section 3(40)(A) of the Employee Re-
 11 tirement Income Security Act of 1974 (29 U.S.C.
 12 1002(40)(A)) is amended—

13 (1) in clause (ii), by striking “or”;

14 (2) in clause (iii), by striking the period and in-
 15 serting “, and”; and

16 (3) by adding at the end the following:

17 “(iv) by an entity for individuals who have en-
 18 tered into a worker flexibility agreement, as defined
 19 in section 3(z) of the Fair Labor Standards Act of
 20 1938 (29 U.S.C. 203(z)).”.

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