

118TH CONGRESS  
1ST SESSION

# S. 3018

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2023

Mr. THUNE (for Mr. SCOTT of South Carolina (for himself, Mrs. BLACKBURN, Mr. CRAMER, Mrs. HYDE-SMITH, Mr. BRAUN, Mr. WICKER, and Mr. THUNE)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Fair Labor Standards Act of 1938 and the National Labor Relations Act to clarify the standard for determining whether an individual is an employee, 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. CRITERIA FOR DETERMINING EMPLOYEE STA-**  
4 **TUS.**

5 (a) CRITERIA FOR DETERMINING EMPLOYEE STATUS  
6 UNDER THE FAIR LABOR STANDARDS ACT.—Section 3(e)

1 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
2 203(e)) is amended—

3 (1) by redesignating paragraphs (2), (3), (4),  
4 and (5) as paragraphs (3), (4), (5), and (6), respec-  
5 tively;

6 (2) in paragraph (1), by striking “paragraphs  
7 (2), (3), and (4)” and inserting “paragraphs (3),  
8 (4), (5), and (6)”; and

9 (3) by inserting after paragraph (1) the fol-  
10 lowing:

11 “(2)(A) An individual shall be determined to be  
12 an independent contractor rather than an employee  
13 of another person if—

14 “(i) such other person does not exercise  
15 significant control over the details of the way  
16 the work is performed by the individual, with-  
17 out regard to any control the other person may  
18 exercise over the final result of the work per-  
19 formed; and

20 “(ii) while performing such work, the indi-  
21 vidual has the opportunities and risks inherent  
22 with entrepreneurship, such as the discretion to  
23 exercise managerial skill, business acumen, or  
24 professional judgment.

1 “(B) The following factors may not be used in  
 2 determining that an individual is an employee of an-  
 3 other person:

4 “(i) Whether such other person requires  
 5 the individual to comply with legal, statutory,  
 6 or regulatory requirements.

7 “(ii) Whether such other person requires  
 8 the individual to comply with health and safety  
 9 standards that are more stringent than other-  
 10 wise applicable health and safety standards.

11 “(iii) Whether such other person requires  
 12 the individual to carry insurance of any kind.

13 “(iv) Whether such other person requires  
 14 the individual to meet contractually agreed-  
 15 upon performance standards, such as dead-  
 16 lines.”.

17 **SEC. 2. EMPLOYEE CLASSIFICATION UNDER THE NATIONAL**  
 18 **LABOR RELATIONS ACT.**

19 Section 2(3) of the National Labor Relations Act (29  
 20 U.S.C. 152(3)) is amended—

21 (1) by striking “(3) The term ‘employee’ shall”  
 22 and inserting the following:

23 “(3)(A) The term ‘employee’ shall”; and

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

1           “(B) Section 3(e)(2) of the Fair Labor  
2 Standards Act of 1938 (29 U.S.C. 203(e)(2))  
3 shall be used in determining under this Act  
4 whether an individual is an independent con-  
5 tractor or an employee of another person, ex-  
6 cept that for purposes of this Act a reference  
7 in such section to the term ‘employee’ or ‘per-  
8 son’ shall be deemed a reference to such term  
9 as defined in this section.”.

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