

## Congress and Biden Administration Could Put You Out of a Job with PRO Act - What You Need to Know

March 13, 2021 - 2020 was a horrible year for employers and employees alike. Tens of millions of Americans lost their jobs due to the pandemic and the often-knee-jerk response of the federal and state governments. So you would think that any legislation moving through congress would be focused on getting people back to work. Unfortunately, the PRO Act is much more likely to force millions of currently self-employed Americans into unemployment and poverty. It is one of the worst pieces of legislation that we've ever seen.

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The actual name of the bill is the Protecting Right to Organize Act. It was passed last week by the House of Representatives and most of the media surrounding the bill has focused on the fact that it would eliminate "right to work" laws in 23 states. These laws are largely blamed for decimating labor unions. Under the pro act, not only would these state laws be usurped by federal law, but companies would have to turn over the contact information for all of their employees to unions so that they can organize. But union organization is only a small part of the bill.

A much larger issue that the media is largely ignoring is that the Pro Act will outlaw most freelance and gig jobs. It does this by imposing a three-point test for freelance work. And part of the test is that the work being conducted can't be central to the company that is hiring you. To give you an idea of how that might work, just think about a company that does software development. Let's say they want to hire a programmer for a specific skill that they need on one project that will be completed over a two week time frame. Under current law, they can easily hire a freelance developer with that skill to complete the project. And once the project is done, the developer and the company can easily part ways.

This arrangement works well for both parties. The company gets the skills it needs without having to go through a long-drawn-out hiring process. And the developer gets work and is able to maintain the flexibility of setting his own hours and working with other clients. But under the PRO Act, this arrangement would be illegal because "software development" is central to the company's business.

This is just one example. Ride share companies like Uber and Lyft would have to hire drivers as employees. Freelance writers would have to find an employer and could only write for them. Gig companies that provide services like baby-sitting, handyman services and dog walking would have to hire the people that currently work as gig workers on their platforms.

Gig workers who make all of their money this way would lose all of their flexibility. They would have to work where and when they are told, just like any other employee. And current gig workers who have a regular day-job but who do just a little gig work to make some extra money would probably be completely out of luck. That's because the current platforms they use would probably hire only those workers who currently work for them the most, or they would go out of business entirely because their business model no longer works.

If you think that doom and gloom scenario is only fantasy, think again. California already has a law like this on the books - known as AB5 - and it has eliminated hundreds of thousands of jobs. Once the law was enacted, Uber, Lyft and some other smaller ride-share and delivery companies got together and spent \$200 million to get a carve-out from voters for their businesses. For a time, when it looked like they might not be successful, Lyft actually announced that it was shutting down in California. Only a last-minute reprieve in the form of a court injunction preventing the state from enforcing the law kept drivers on the road.

While Lyft and Uber were successful in their efforts, other businesses still have to contend with AB5. And many of those businesses simply won't hire people in California because of the law there. The PRO Act will bring this failed California policy to the rest of the nation. And for what? It certainly isn't because gig workers are demanding it.

In California, more than 80% of ride share drivers were opposed to AB5 when it was signed into law. And poll after poll show that approximately 3/4 of freelance workers don't want to be employees. They like the freedom to set their own schedules and work with multiple clients. They are self employed because they want to be.

The likely outcome of the PRO Act for gig and freelance workers is completely predictable. Those with money and knowledge will form their own companies and use them as a shell. Rather than hiring an individual for freelance work, companies will hire their newly formed entities and continue to operate pretty much as they always have. But this is likely to be a small minority of these workers.

In other cases, companies that currently hire American freelancers will turn to freelance workers overseas. Take the example of the software company mentioned earlier. Even with the PRO Act, there will be nothing to stop that same company from contracting with a developer overseas to gain access to the skills they need for a short period of time.

And then of course, there will be the majority of gig and freelance workers who suddenly find themselves without any ability to make an income.

Whether or not the PRO Act can get approved by the Senate is questionable. Under the current Senate rules, that isn't likely because it will face a filibuster. But Senate Democrats have been threatening to get rid of the filibuster entirely. If they do, there is a real possibility that this monstrosity of a bill could wind up on the president's desk. And there is very little doubt that he would enact it into law.

by Jim Malmberg

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