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Support H.R. 3522: Preserving Direct Seller Independence Act

Direct sellers are independent contractors who sell products and services through personal presentation and demonstration, outside a fixed retail establishment. People typically sell to their neighbors, friends and relatives on a part time basis. The business offers a low-risk way to participate in a fast growing economy. The Fair Labor Standards Act (FLSA) should be amended to more clearly define direct sellers as independent contractors for these individuals to have the freedom and flexibility to continue engaging with this viable dynamic retail channel.

Court Legal Standard for Direct Sellers

Recent class action and wage and hour lawsuits, have been filed under the FLSA against companies, including gig/sharing economy companies that are utilizing independent contractors in new and different ways. Direct sellers currently rely on the outside sales exemption under FLSA to be defined as independent contractors since these individuals sell products and services away from the customer's home and other non-retail locations. However, this language relied on by direct sellers is not perfect and could be misinterpreted by courts as not applicable to these transactions. A clearer standard is needed for direct sellers.

Consistency with Current Language

For over thirty-five years, the Internal Revenue Service Code (26 U.S.C. § 3508) has defined direct sellers as statutory non-employees. Similar language is needed under FLSA to provide entrepreneurs with the same clarity and protection. Adding specific language under FLSA is not new. The statute currently contains thirteen classes as exempt. By incorporating 26 U.S.C. § 3508 by reference into FLSA, direct sellers can be the fourteenth.

Direct sellers are your neighbors, friends, and family—whether they work a few hours a week or full time, they are American entrepreneurs in the truest sense of the word. It is imperative that their independence be clarified under the FLSA.

The Direct Selling Association (DSA) is the national trade association for companies that offer entrepreneurial opportunities to independent sellers to market and sell products and services, typically outside of a fixed retail establishment. More than 18 million Americans are involved in direct selling in every state, congressional district and community in the United States. In 2017, direct selling generated \$34.9 billion in retail sales.