



Vermont Technology Alliance
The Voice for Technology in Vermont

**Statement on Independent Contractors
House Commerce and Economic Development Committee - March 2, 2016
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It's time for Vermont to change how it classifies independent contractors

The Vermont Technology Alliance supports legislation that would provide clearer, simpler, definition and rules concerning independent contractors with regard to worker's compensation and unemployment insurance.

Vermont needs a new definition that balances worker protection with support for an independent and collaborative workforce that is an important part of the tech industry.

Vermont tech jobs and independent contractors

Vermont has independent contractors working in tech jobs, such as web developers. And tech companies in Vermont use - or want to use - independent contractors in their businesses.

Tech jobs are a critical, successful and growing part of Vermont's economy:

- Tech jobs represent 40% of all Vermont wages, generating an estimated \$5.6 billion in annual pay.
- Vermont's tech workers earn 63% more compared to the Vermont average wage.
- Tech jobs are growing faster than Vermont's total employment, with growth of 8.3% over the past ten years compared to the state's average employment growth of 1.2%.
- Every tech job creates up to two additional jobs in the Vermont economy.

Most Vermont tech businesses are hiring and most want full-time employees, rather than independent contractors. However, there are times when independent contractors are needed.

There are benefits for supporting independent contractors for employers and workers

For businesses:

- Tech businesses are more competitive and effective when they can bring together specialists on demand to complete project-specific work.
- For many tech businesses, contracting with independent contractors allows them to address specialized needs and changing workloads.
- This is especially true for our high-growth software and IT industry, where it is common to hire multiple freelance software developers, for instance.

For individuals:

- More professionals are choosing independent contractor and freelance work.
- Vermonters often decide to be independent contractors by choice - they choose freelance work over regular employment.
- They enjoy the freedom, creativity, and responsibility of entrepreneurship.
- Independent contractor work can be full-time or part-time, and may be the primary source of income or a supplemental source.

Independent Contractors are a Growing part of our economy

The independent workforce (or gig economy, as it's sometimes called) is growing faster than the entire workforce.

A [study](#) commissioned by the Freelancers Union and Upwork found:

- A third of Americans are doing freelance work
- Most prefer it over traditional employment
- Most (60%) *earn more* as freelancers vs. traditional employment.
- More than a third reported increased demand for their services.

Problems with the current independent contractor definition in Vermont's tech sector

- Many Vermont tech businesses have expressed frustration with the current guidelines, which tend to define nearly all independent contractors as regular employees (through the ABC test).
- For example, under current law, independent contractors with their own businesses could be considered employees of the businesses they work for:
 - If the work is similar to what is done by employees at the hiring business.
 - If the contractor once worked for the employer – no matter how long ago and in what capacity.
- This has resulted in:
 - Problems for the employer – usually through aggressive enforcement and fines they did not see coming.
 - Lost work opportunities for Vermont independent contractors, as Vermont businesses are reluctant to hire them.
 - Vermont tech businesses hiring independent contractors out of state instead of hiring Vermont contractors.
- Three examples of independent contractor violations
 - A software company that hired a professional consultant – in business for himself – to provide finance and accounting services.
 - A tech business that contracted with a former employer who had left the company years ago to form her own website development business, with her own clients. (The employee had once done similar work while an employee).
 - A Burlington-based IT provider who hired an established, sole proprietorship business for work at a customer in Rutland. (Classified as an employee).

The current statutory definition of employee vs. independent contractor, encompassed in the ABC test is no longer compatible with the reality of business today. This is certainly the case within our growing technology sector.

We need language that:

- Includes protections for individuals who are and should be deemed "employees."
- More flexibility for true independent contractors that don't meet the strict ABC test.
- Includes protections for individuals who should be and are deemed "employees"

All three proposed bills address this and improve current rules, including these features:

- They provide a common definition of an independent contractor under both workers' compensation and unemployment statutes
- They eliminate the strict ABC Test and replace it with defined criteria, where either at least two out of a set number must be met, or they must be assessed under a "totality of the circumstances," which is more in line with the federal guidelines.

By moving ahead with a change to independent contractor classifications, Vermont can:

- Support flexible business and employment opportunities
- Continuing to protect employees
- Help both businesses and individuals take advantage of work opportunities and high wages in Vermont's tech economy.