



The Protecting the Right to Organize Act (PRO Act) (H.R. 20 / S. 567)

The Protecting the Right to Organize Act (PRO Act) (H.R. 20, S. 567) would, among other purposes, dramatically expand the definition of "employee" in the National Labor Relations Act (NLRA), adding an ABC test to determine if someone is an independent contractor or employee for purposes of union organizing.

The legislation would make it harder to properly classify research subjects receiving incentives for participation in market research studies as independent contractors. The ABC factors are hard to satisfy for any business, but dramatically more difficult for research subjects. Attempts to unionize research subjects, which could happen under the PRO Act, would severely complicate the relationship with research subjects and the future viability of the insights industry.

Background

The U.S. Department of Labor, IRS, and state labor and tax agencies sometimes claim that respondents receiving incentives for participation in market research should be treated as employees of the companies conducting the research studies. This can bring responsibility for unemployment insurance payments, taxes and fees, minimum wage, overtime pay, extra recordkeeping, and more. **However, research subjects receiving incentives for participation in market research studies are independent contractors and should be treated as such.**

Some research subjects receive reimbursement for their participation in a study, depending on the length and circumstances of the study, the specialized knowledge or background of the participant, etc. However, companies that conduct these studies sometimes face cases in which a person receiving a small reimbursement for participating in just a single study is characterized as an employee of the firm conducting the study.

Factor tests for employee classification did not develop with market research in mind; the ABC test was conceived in relation to classic professions like construction workers, and struggles with research participation, which is not a profession at all.

Research subjects are obtained according to the demographic or other specific needs of a client; participation is voluntary, and research subjects are free to opt-out at any time. They may participate in multiple studies at nearly the same time, but research subjects do not seek to share their opinions as a "job" or proxy for employment, but rather because they wish to share their opinions and have an impact (and maybe have some fun as well). Not only is research participation not a profession, our industry goes to great lengths to prevent individuals from participating in too many research studies, referred to as "cheater-repeaters." Individuals that attempt to make a living this way produce skewed data instead of representative data. Cheater-repeaters also threaten the integrity of research results because they frequently get onto panels using fake ID and data, and similarly provide fake or erroneous responses to questions.

The term "employee" in the PRO Act should exclude research subjects receiving incentives

The prospect of research subjects in the U.S. being unionized represents a serious threat to research studies involving incentives, a significant portion of the U.S. insights industry's work. The PRO Act presents the perfect opportunity to clarify in federal labor law that market research participants are independent contractors and should not be mistaken for employees of insights companies/organizations.¹ Absent an amendment of this nature, or one striking the redefinition of employee altogether, the Insights Association opposes the PRO Act.

¹ IA recommended the following amendment to the definition of "employee" in the PRO Act: *The term "employee" shall also not include a participant in market research receiving compensation for that participation. Market research involves the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences, or behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional, or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.*