

INTRODUCTION OF THE EMPLOYEE
MISCLASSIFICATION PREVEN-
TION ACT OF 2008

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2008

Ms. WOOLSEY. Madam Speaker, Employers who misclassify their employees as independent contractors rob workers of needed pay and benefits and cost government at all levels substantial uncollected revenues—resources that are needed for vital government programs and services.

Yet misclassification is widespread. According to the General Accounting Office, at least 10 million workers in the U.S. are classified as independent contractors, and studies show that as many as 30 percent of employers misclassify their workers. Why do they do it? They misclassify to avoid the cost of payroll taxes, insurance premiums and mandated benefits, and to boost their profits. In fact, the Department of Labor has concluded that the number one reason for misclassification is to avoid the payment of workers compensation premiums, as well as workplace injury and disability-related disputes.

The cost is high for employees, who when misclassified, lose out on employee benefits, including those that are exempt from taxation or receive tax-deferred benefits, such as retirement, life insurance, accident and health coverage, qualified tuition reduction programs, benefits under a cafeteria plan, educational assistance programs and dependent care assistance programs. Additionally misclassified workers are not afforded even minimal workforce protections, including workers compensation, minimum wage, overtime pay, health and safety requirements and the right to join a union. And eligibility for Medicare, Social Security and Unemployment compensation is negatively affected as well.

The cost to society is high as well, and it is estimated that billions of dollars are lost each year; money that would otherwise be paid to the States and the Federal Government in taxes. Despite, this enormous problem, the Department of Labor (DOL) has failed not only to crack down on this practice by enforcing current laws, but has failed to coordinate with other agencies to address the issue. In addition, it is unclear under the law which standard should be employed for determining who is and who is not an independent contractor.

The Employee Misclassification Prevention Act of 2008, which Representatives ANDREWS, MICHAUD, MILLER and I are introducing today attacks the problem of misclassification head-on by:

Clarifying that employee records must reflect the worker's accurate status or classification as an employee or non-employee and that it is a violation of the Act to make an inaccurate classification.

Requiring employers to provide employees and non-employees notice of their status and notice of their rights to challenge that classification.

Providing additional penalties for misclassification as well as increased penalties for violations that are willful or repeated.

Requiring state unemployment insurance agencies to conduct audits to identify employers who are misclassifying employees.

Mandating the Department of Labor (DOE) to develop a system to track and monitor States' effectiveness in identifying employers who misclassify.

Explicitly allowing DOL and the Internal Revenue Service (IRS) to refer incidents of misclassification to one another; and

Requiring DOL to perform targeted audits focusing on employers in industries that frequently misclassify employees.

We know that there are good employers out there who pay their employees fair and honest wages. This bill is to protect bona fide employees from the 30 percent who don't.

EARMARK DECLARATION

HON. JIM MCCRERY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2008

Requesting Member: Congressman JIM MCCRERY.

Bill Number: H.R. 5658, FY2009 National Defense Authorization Act.

Account: Research and Development, Army.
Legal Name of Requesting Entity: Biomedical Research Foundation of Northwest Louisiana.

Address of Requesting Entity: 1505 Kings Hwy., Shreveport, LA 71103.

Mr. MCCRERY. Madam Speaker, I submit the following:

Description of Request: This \$1.2M authorization authorizes appropriations for the continued research and development of EMB001, a novel treatment for Post Traumatic Stress Disorder. The Biomedical Research Foundation in collaboration with Embera Neuro Therapeutics, Inc. (Shreveport, LA) are seeking federal assistance to develop a collaborative research plan with the Department of Defense to test the effectiveness of EMB001 for treatment of post traumatic stress disorder (PTSD) and related neuropsychiatric disorders. Cost breakdown: \$850K Direct Costs associated with research initiative, \$350K for Overhead/Personnel.

INTRODUCTION OF THE EMPLOYEE
MISCLASSIFICATION PREVEN-
TION ACT OF 2008

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2008

Mr. ANDREWS. Madam Speaker, along with my colleagues Congresswoman LYNN WOOLSEY, Chairman GEORGE MILLER, Congressman MIKE MICHAUD, Congressman MCDERMOTT and almost all of the Democratic Members of the Committee on Education and Labor, I rise today to introduce the Employee Misclassification Prevention Act of 2008, EMPA.

The egregious practice of misclassifying workers as independent contractors needs to end. EMPA is pro-employee, pro-employer and pro-taxpayer. The bill will protect employee benefits, remove incentives for employers to misclassify their workers, and ensure that bad employers don't line their own pockets with unpaid payroll taxes.

In the last decade we have seen a questionable increase in the amount of individuals classified as independent contractors. In 1984, which was the last time a comprehensive misclassification study was conducted by an oversight agency on this issue, the Internal Revenue Service (IRS) estimated that 15 percent of employers misclassified 3.4 million workers as independent contractors. As a result, \$1.6 billion or \$2.72 billion in inflation-adjusted 2006 dollars in Social Security, unemployment and income taxes was stripped from the hands of the Government and went into the pockets of tax evaders. Furthermore, the 3.4 million workers who were misclassified were stripped of many of their basic, but essential, employee rights.

In some cases, classifying an individual as an independent contractor is quite right and quite appropriate. If someone is retained for a limited purpose, usually for a limited time, to do a specific job function for an employer, it is quite necessary and appropriate that that person not be treated as an employee for reasons of flexibility, and for reasons of fair compensation.

However, when an individual is considered an independent contractor by their employer, but is told what to do, has no discretion over how to conduct the affairs of the business, and whose compensation is fixed and set by the employer, it is our duty as Members of Congress to protect this employee's rights under Federal law.

There are millions of workers, who mow lawns, drive trucks, work in garment linen factories, and serve food in restaurants that I would consider an employee; nonetheless, these hardworking individuals are exploited and misclassified by their employers seeking to evade paying taxes. If any American worker is told what to do, when to do it, how much money they are going to make, what the work rules are, what they can and cannot do by their employer then the law should require they be classified as an employee and receive all of the benefits of the 40-hour work week, as well as worker safety protections, pension and healthcare protections and other worker protections provided to them under Federal law.

I encourage everyone to join me, my co-sponsoring colleagues, as well as the AFL-CIO, Change to Win, United Brotherhood of Carpenters, International Brotherhood of Teamsters, the Laborers International, UNITE HERE, the National Employment Law Project, and others and support EMPA to protect workers across the country from employers who are only interested in making a profit for themselves at the expense of the American workers and taxpayer.

EARMARK DECLARATION

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2008

Mr. YOUNG of Alaska. Madam Speaker, I submit the following:

Bill Number: H.R. 5658, Army, RDT&E, Line 6, PE # 0602120A.

Legal name and address of entity receiving earmark: Alkan Shelters, LLC, 1701 S. Cushman St., Fairbanks, AK 99701.

Description of how the money will be spent and why the use of Federal taxpayer funding is justified: In an effort to support the needs of the Special Operations Community with regard to establishing remote area communications and intelligence, Alkan has designed a C4 module capable for use on the smaller ATV platforms. The module design incorporates the latest in satellite communications, UAV & IR camera surveillance and military mesh network antenna systems. It will provide a means by which to gather field intelligence and transmit this data back to the tactical operations center. This project funding would be used to build a military ATV vehicle and C4 module and has already received \$500,000 in funding from SOCOM.

Description of matching funds: This project has received \$500,000 in funding from SOCOM.

Authorized Amount: \$1,500.00.

Project Name: Command and Control, Communications and Computers (C4) module.

Detailed Finance Plan: \$300,000, ATV; \$300,000, Shelter; \$300,000, C4 Components; \$600,000, Engineering.

RECOGNIZING NATIONAL DRUG COURT MONTH

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2008

Mr. ABERCROMBIE. Madam Speaker, I rise today to congratulate the nine drug courts in my State and around the country during National Drug Court Month. Over 2,100 drug courts in the United States provide an alternative to incarceration for non-violent, drug-addicted offenders by combining intense judicial supervision, comprehensive substance abuse and mental health treatment, random and frequent drug testing, incentives and sanctions, clinical case management and ancillary life skills services. The tireless efforts of the judges, prosecutors, defense attorneys, treatment providers, rehabilitation experts, child advocates, researchers, educators, law enforcement representatives, correctional representatives, pre-trial officers and probation officers that are involved in drug courts provide substance abusing offenders with the much-needed chance at long-term recovery and productive lifestyles.

I have seen firsthand the impact of the drug courts in my State, where drug court programs have enhanced public safety, saved taxpayer dollars and, most importantly, saved lives. Since opening their doors, Hawaii's drug courts have graduated over 840 adult clients, 180 family clients, and 81 juvenile clients statewide. During fiscal year 2006, the recidivism rate for adult graduates was a mere 8 percent. For juvenile clients the recidivism rate was 13 percent. Family drug court clients experienced no recidivism whatsoever in 2006.

As we face a growing population of drug-addicted offenders in the American justice system, we must expand our efforts to bring treatment to a larger number of those in need. According to a recent study by the Urban Research Institute's Justice Policy Center, approximately 1.5 million drug-involved offenders should be diverted to drug court, which would generate \$46 billion in savings to American

taxpayers. Armed with our existing research that drug courts work, reduce recidivism, and save lives and money, we must work on taking drug courts to scale.

If society is truly going to save the lives of the addicted, break the familial cycle of addiction for future generations, have a substantial impact on associated crime, child abuse and neglect, reduce poverty, alleviate the over-reliance on incarceration for the addicted, and reduce many of the public health consequences in the United States, drug courts must be taken to scale. There is no greater opportunity for systemic social change in the American justice system. There is no greater opportunity to heal families and communities.

Again, congratulations to the dedicated drug court professionals and graduates from Hawaii and around the country on a job well done.

INTERNATIONAL FOOD CRISIS AND HAITI

SPEECH OF

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 20, 2008

Mr. CONYERS. Mr. Speaker, I rise today to bring to the attention of the Congress and to the American people the plight of the western hemisphere's second oldest republic, Haiti. The Haitian people are being negatively affected by market forces out of their control that have driven food prices up drastically. Haiti, where about 4 out of 5 people live at or below poverty, is an island nation that consists of approximately 8.7 million people. To put this in perspective, imagine the City of New York; now imagine that same city with 80 percent of its citizens in poverty.

The American people and Congress have already assisted Haiti with the HOPE and HOPE II (Haitian Hemispheric Opportunity through Partnership Encouragement) Acts. HOPE was the tip of the iceberg. It provided jobs to allow Haitians to overcome poverty. HOPE II will create even more gainful employment and more sustainable jobs for Haitians and create a self-sustaining infrastructure. These acts will provide jobs needed to help more Haitian citizens emerge from poverty and gain employment which will lead to a more prosperous Haiti.

However, there is much more work to be done, Mr. Speaker. Right now the World Food Programme is in need of \$755 million to meet immediate demands and USAID also needs an additional \$240 million. Increases in these programs will ensure that school food programs in the developing world are not eliminated due to current food price inflation. The food price escalation is also affecting the region as a whole.

Due to escalating market prices, in rural El Salvador, with the same amount of money today, people can purchase 50 percent less food than they did 18 months ago. This means that, in principle, their nutritional intake, on an already poor diet, is being cut by half.

In Nicaragua the price of tortillas went up 54 percent between January 2007 and January 2008.

We cannot let our neighbors suffer due to circumstances out of their control. We have taken small steps but now the government of

the United States must be an active agent in the development of the third world. We must follow the lead of our philanthropic and non-profit sectors.

Too often those in government see aid to developing nations as a waste of money, throwing taxpayers' dollars down a well. India is a great example of the benefits of foreign aid. In the 1960s American dollars funded fertilizer subsidies and high-yield seed varieties led India out of poverty and famine into self-subsistence. India is now entering the developing world, so much so that their demand for processed foods is now decreasing the supply of food aid available to countries such as Haiti.

This can happen in Haiti if the United States focuses on delivering basic goods to the hemisphere's poorest people. By increasing vaccines, textbooks, water pipes, and medical care we will not make countries dependent, we will be giving Haitians the basic inputs they need to improve their lives. We must invest in high-yield, proven, and scalable strategies to empower the Haitian people and those suffering throughout the world.

I have submitted for the record an article from the New York Review of Books authored by Jeffrey D. Sachs.

[From the New York Review of Books, Dec. 21, 2006]

HOW AID CAN WORK

(By Jeffrey D. Sachs)

In a very different era, President John Kennedy declared "to those peoples in the huts and villages across the globe struggling to break the bonds of mass misery, we pledge our best efforts to help them help themselves, for whatever period is required—not because the Communists may be doing it, not because we seek their votes, but because it is right. If a free society cannot help the many who are poor, it cannot save the few who are rich."

It is difficult to imagine President Bush making a similar pledge today, but he is far from alone in Washington. The idea that the US should commit its best efforts to help the world's poor is an idea shared by Bill Gates, Warren Buffett, and Jimmy Carter, but it has been almost nowhere to be found in our capital. American philanthropists and non-profit groups have stepped forward while our government has largely disappeared from the scene.

There are various reasons for this retreat. Most importantly, our policymakers in both parties simply have not attached much importance to this "soft" stuff, although their "hard" stuff is surely not working and the lack of aid is contributing to a cascade of instability and security threats in impoverished countries such as Somalia. We are spending \$550 billion per year on the military, against just \$4 billion for Africa. Our African aid, incredibly, is less than three days of Pentagon spending, a mere \$13 per American per year, and the equivalent of just 3 cents per \$100 of US national income! The neglect has been bipartisan. The Clinton administration allowed aid to Africa to languish at less than \$2 billion per year throughout the 1990s.

A second reason for the retreat is the widespread belief that aid is simply wasted, money down the rat hole. That has surely been true of some aid, such as the "reconstruction" funding for Iraq and the cold war-era payouts to thugs such as Mobutu Sese Seko of Zaire. But these notorious cases obscure the critical fact that development assistance based on proven technologies and directed at measurable and practical needs—