

ATA Statement on Employee or Independent Contractor Classification under the Fair Labor Standards Act

The American Translators Association (ATA) is the largest professional association of interpreters and translators in the U.S., with more than 8,500 members working in over 50 languages.

On October 13, 2022, the U.S. Department of Labor (DOL) published its notice of proposed rulemaking (NPRM) that puts forward a restrictive interpretation of the “economic realities” test, which is used to determine a worker’s status as an employee or independent contractor for the purposes of the Fair Labor Standards Act (FLSA). This restrictive interpretation would result in companies, and even many governmental agencies, being forced to classify as employees a large number of workers who, under current law, are properly classified as independent contractors. This could have a detrimental impact on the livelihoods of our members, the important work they do to ensure the federally protected right to language access for millions of Americans, and our economy.

Many interpreters and translators work with language services companies (LSCs), governmental bodies, and other clients as independent contractors. [Current vetted statistics](#) show more than 75% of language services professionals are independent contractors, providing knowledge-based, professional services in exchange for fees that they determine and on schedules that they set.

As we saw in California when AB 5 was signed into law, the imposition of employee status on independent contractors did not have the effect lawmakers desired: contracts were instead unilaterally terminated, and many language services professionals lost their livelihoods to linguists in other states. This, in turn, had a detrimental impact on language access for limited English proficient individuals, which is protected under federal law, as they were unable to access government services and benefits they were entitled to due to a dearth of interpreters.

ATA is concerned about DOL’s rigid, one-size-fits-all approach to worker classification, which ignores what happened in California with AB 5 and discounts the concerns of tens of thousands of professional freelancers and the dozens of language professionals who spoke up during DOL listening sessions on the development of this rule in June of this year.

We urge DOL to consider the result of a rigid worker classification test like the ABC test in California’s AB 5: despite its aim to help misclassified individuals, it ensnared thousands of legitimate freelance professionals in its wide-reaching net and required over 100 exemptions in the subsequent clean-up bill AB 2257. To date, hundreds of legitimately freelance-dominated

professions still struggle under the constraints of this unnecessary law. People have been stripped of their choice on how to make their living and balance their work and personal lives, and have lost the freedom our Constitution guarantees all Americans to life, liberty, and the pursuit of happiness.

Although the proposed rule does not contain a strict ABC test per se, it makes changes to the economic realities test and contains a criterion that is similar to the most onerous condition of the ABC test, i.e, the extent to which the work performed is an integral part of the employer's business. The potential for overly broad interpretations of these criteria will lead to confusion, tie up determinations in protracted litigation, and generally create an environment of fear, not only for LSCs but also for linguists wishing to engage with them as has been their tradition and reality. In fact, this rule could be more destructive than California's AB 5. In the specific case of our professions, it could drive multilingual work off-shore instead of keeping it in the U.S. The language services industry is a [\\$64.7 billion industry globally](#), with the U.S. accounting for approximately 40%. The advent of remote simultaneous interpreting and other virtual collaboration models means that, rather than hire U.S. contractors as employees, U.S. companies will simply take their business elsewhere.

Now more than ever, in our ever-evolving world, the U.S. must safeguard our ability to effectively communicate across a variety of languages within a myriad of industries: government, NGOs, healthcare, legal, business, and education, among others. Translators and interpreters are overwhelmingly independent professionals, by choice and by design. Our ability to practice our craft in an unhindered manner is essential to preserving language access in our country. Lives depend on it. It is not practical or feasible for any single employer to hire one linguist who speaks a dozen languages and is an expert in two dozen topics. Nor is it practical or feasible for a single employer to hire a dozen linguists as employees to do a single day's work, such as translating an important Medicare brochure into 12 languages commonly spoken in the U.S.

Protections from exploitation and misclassification are essential for some occupations. Ours is not one of them. We urge you to take stock of the California example, look carefully at the evidence of our independent contractor tradition, and fix this rule before it proceeds and leads to unintended consequences and needless harm.

We ask you to revert to the pre-2021 economic realities test, which better honors the independent nature of language professionals' work, protects independent translators and interpreters nationwide, and safeguards language access and our economy.

In its present form, the proposed rule poses a serious danger to professional linguists, the priority of language access, and the people we serve, including all Americans. As the president of the largest association of language professionals in the U.S., with our tradition of independence in fact and by the choice of the majority of highly skilled linguists, I look forward to working with you to remedy this problem with the rule.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Madalena Sánchez Zampaulo". The signature is written in a cursive style with a prominent horizontal line above the first few letters.

Madalena Sánchez Zampaulo
President, American Translators Association