- Associated builders and contractors of Michigan
- Association of Language Companies
- Barry County Chamber
- Bay Area Chamber of Commerce
- Big I Michigan
- Detroit regional chamber of commerce
- Grand Rapids Chamber of Commerce
- Greater Lenawee Chamber of Commerce
- Home Builders Association of Michigan
- Insurance alliance of Michigan
- Lansing regional chamber of commerce
- Michigan Association of CPAs
- Michigan Bankers Association
- Michigan farm Bureau
- Michigan Gas & Electric Association
- Michigan Ground Water Association
- Michigan Licensed Beverage Association
- Michigan Manufacturers Association
- Michigan Press association
- Michigan Realtors
- Michigan Restaurant & Lodging Association
- Michigan Retailers Association
- Midland Business Alliance
- Michigan State Medical Society
- Michigan Trucking Association
- National Association of Insurance and Financial Advisors
- National federation of independent business Michigan
- Plymouth Community Chamber of Commerce
- Saginaw County Chamber of Commerce
- Small business association of Michigan
- Southern wayne county regional chamber

COALITION TO OPPOSE SWEEPING LIMITATIONS ON THE USE OF INDEPENDENT CONTRACTORS

We oppose legislation (House Bill 4390 et seq.) creating a problematic "ABC test" for independent contractors. Here are the top things to know about this proposal:

The legislation seeks to limit the ability of *ALL* employers to use independent contractors. Under HB 4390, for a worker to be properly classified as an independent contractor, companies would need to establish the individual meets *all three* components of the ABC test:

1. "The individual is free from control and direction of the payer in connection with the performance of the work, both under contract and in fact."
2. "The individual performs work that is outside the usual course of the payer's business."
3. "The individual is customarily engaged in an independently established trade, occupation, or business of the same work performed by the individual for the payer."

Can't be fixed through exemptions. California, which adopted an ABC test in 2019, now exempts over 109 types of workers. Additional exemptions are under consideration and are dragging out what has already been a prolonged, unnecessary and messy process. Additionally, these exemptions have not solved the issue and instead created a system of winners and losers. Some of CA's exemptions include most outside salespeople; insurance underwriters, auditors, and risk managers; medical professionals; other licensed professions (e.g., lawyers, engineers, accountants); investment advisers; grant writers; graphic designers; freelance writers; real estate professionals; most bona-fide business-to-business relationships; and more. *The Michigan bill contains no exemptions as written.*

Under the ABC test, workers are *presumed* to be employees. HB 4390 would require employers to bear the burden of proof, by a preponderance of evidence, that they did not misclassify someone as an independent contractor and prove all three factors.

Michigan has an independent contractor test today. Recent court decisions, including *Benion v LeCom*, returned the classification determination to the long standing "economic-reality test." This 6-factor test considers permanency of the relationship; degree of skill; the worker's investment in tools; the worker's opportunity for profit/loss; degree of control over the work; and whether the service rendered is an integral part of the employer's business.

The bills contain steep penalties for misclassification—including prison time. HB 4390 and related bills in the package would drastically increase the penalties for misclassifying a worker and egregious or repeated offenses could lead to years-long prison sentences. The fines for such violations would also be increased ten-fold and encourage workers to bring their own complaints of misclassification under the legislation (and obtain 3x the amount of wages and fringe benefits wrongfully withheld). Finally, the legislation directs the Attorney General to establish an enforcement unit and allows whistleblowers to get a bounty (up to 30% of the penalties collected through such enforcement).

The bill negatively impacts workers. If the Legislature forces more employers to classify more workers as employees, those individuals may lose the flexibility they desire (e.g., more control over how, where and when they work and/or how they carry out their duties) and jobs may be lost. The California law has proven unpopular with voters, who repudiated the state's similar law as applied to gig-economy drivers by passing a constitutional amendment (Proposition 22) to overrule California's law.