

COMMENTARY OPINION

Op-ed: Gig workers, take note: This legislation would hurt the self-employed

By JOANNE CLEAVER
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Rep. Bobby Scott, D-Va., and House Speaker Nancy Pelosi at a Feb. 5, 2020, news conference on the Protecting the Right To Organize Act in the U.S. Capitol. (Sarah Silbiger/Getty)

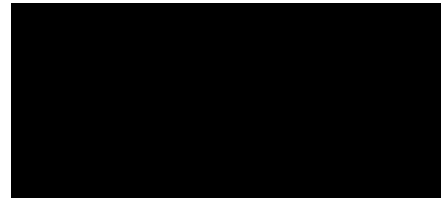
It was July 1982, in a humid garden apartment in Evanston. I was the 24-year-old mother of a 10-month old baby, starting my freelance writing career along with my family.

A big deadline loomed. I needed to interview an advertising agency vice president. I had scheduled the appointment for my baby's naptime.

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She slept. He postponed.

She woke. He called.

The baby opened her mouth to wail. "Hold on," I said to the bigwig's secretary.

I plopped the baby in the playpen next to the wood desk that held my Smith-Corona electric typewriter. Babbling small talk into the phone, I stretched the cord to its max and nabbed a box of Cheerios from the kitchen counter.

Still chattering, I poured the entire box of cereal over the baby's head. She held up her little hands in glee. It was raining Cheerios! For the next 45 minutes, I interviewed the executive while my baby played in her cereal sandbox.

As we finished, he said, "Can I ask you a personal question? You're working from home, right? Can you tell me how you do it? My wife wants to do what you do."

Since then, my career has evolved: now, my main work is as a career consultant, researcher and author. But one thing has remained constant: like that executive's wife, people want to know how to make a go of self-employment.

Now, Congress is considering legislation that will push self-employment nearly out of reach, just when Americans need more career options, not fewer.

The Protecting the Right to Organize Act, or PRO Act, [passed Tuesday by the House](#), is one of two bills that, together, are specifically designed to suffocate self-employment of all sorts. The Senate must not only reject this badly flawed legislation but must go further to encourage self-employment as a powerful force in the post-COVID-19 recovery.

Both proposed laws are based on California's [badly flawed Assembly Bill 5](#), that has shut down tens of thousands of freelance careers in that state, from translators to editors to actors. The Worker Flexibility and Small Business Protection Act and the PRO Act are both written specifically to force workers and companies to default to employee-employer relationships. Self-employed professionals must prove that they are not employees, instead of the current practice of declaring themselves as independent workers or small businesses and being believed that they are what they say they are. A raft of additional conditions and penalties directly undermine principles of successful self-employment.

For instance, companies would be prohibited from hiring contractors for functions integral to the companies' missions. So, that means that a software company could not hire a specialized software developer, designer, tester or consultant, because the contractor and client would not be allowed to be in the same field. Likewise, a self-employed actor could not be hired by a theater company. A freelance guitar player could not have a contract to perform at a club ... unless the club hired that player as an actual employee, for the duration of the performance.

This is absurd and directly contradicts the advantages of self-employment that so many rightly desire: the freedom to work with clients you choose, under conditions and for pay negotiated with that client.

In California, tens of thousands of traditionally self-employed creatives, journalists and others were effectively shut down. Subsequent modifications slightly eased some of the restrictions for some affected professions. But, the proposed federal law is as restrictive as the original California law.

This **"default employer" perspective** is framed by unions, who wrote much of the California law and whom congressional Democrats apparently feel they must placate. California's law was intended to target ride-share companies — Uber, Lyft and their clones — and others whose entire business model is grounded in offering on-demand work to contractors. This business model has its problems, but it's an overreach in the extreme to essentially ban contract work as retaliation against these work-for-hire platforms.

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It's throwing a basketball against a badminton racket: a purposefully destructive response to an issue that requires nuance.

Just when working caregivers need more options than ever; just when the nearly and newly retired need to earn extra money to firm their retirement security; just as COVID-19-crushed workers seek for new ways to apply their skills to right their family finances — now, with all of the economic trauma reverberating through American families, is not the time to shut down this proven route to economic stability.

First, the Senate must roundly reject both acts. Then, Congress should seize the opportunity to take a deeper look at the power and potential of self-employment as a sustainable route to family economic security.

The self-employed want wider opportunities and Congress should give it to them. Here's how:

- First, give the Small Business Administration an attitude adjustment and a new directive to invest in self-employment, not dismiss it. The SBA's primary yardstick for success, as it amply articulates, is that companies have employees. The SBA counts self-employment as beneath it because the self-employed support mainly their own families. Why isn't this celebrated, not scorned? Start by elevating self-employment as a policy priority. Develop and apply metrics that track the progress of self-employment and find out what economic incentives, tools and investments can grow self-employment.
- Incentivize state and metro economic development agencies to reorient economic development around workers, not around companies. This revolution is already underway, driven by the neck-snapping pivot to virtual work forced by the pandemic. Identify and invest in broadband for all and measure the specific contributions of professionals who enrich small communities with their income as well as their presence. Could self-employment as an economic development imperative keep professionals from fleeing Illinois? Why not try?
- Integrate caregiving incentives, child care subsidies and other family supports with structures that encourage self-employment. Simplify and strengthen modes of self-funding retirement through self-employment. Tear down barriers that discourage older workers from transition to self-employment as the last, best phase of their careers.

Women, especially, need self-employment as a deliberate career stage. Now, with millions of women trying to restart their careers in the post-pandemic economic recovery, employers and women are eager to forge new, hybrid working arrangements. Stifling self-employment shuts down women's options and hurts families' and women's chances for lifelong economic independence.

That Cheerios-covered baby is the most recent young mom I've coached in the joys and stresses of designing self-employment and family around each other. She's all grown up now and has four young children of her own. She uses self-employment as a key career strategy transition among staff teaching jobs, self-employment as an educational consultant and authoring her own books. (She has a good career coach.)

Please, Washington, invest in the self-employment of my daughter and millions of her peers, as well as my self-employment and that of millions of other baby boomers. Don't force us into the false choice of our families or our careers, our babies or our livelihoods.

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