



128 Dorrance Street, Suite 400  
Providence, RI 02903  
Phone: (401) 831-7171  
Fax: (401) 831-7175  
[www.riaclu.org](http://www.riaclu.org)  
[info@riaclu.org](mailto:info@riaclu.org)

## **ACLU OF RI POSITION: SUPPORT**

### **TESTIMONY IN SUPPORT OF 21-H 5854, AN ACT RELATING TO FAIR EMPLOYMENT PRACTICES March 17, 2021**

My name is Lynette Labinger and I am a cooperating attorney with the ACLU of RI, and I write to express the organization's strong support for this bill, as well as a number of others being heard today that would achieve considerable improvements in the laws addressing discrimination in employment and providing protection against retaliation.

House 5854 amends the definition of "employee" in RI General Laws §28-5-6(7) to expand the scope of protected persons to reflect today's reality: that an increasing number of today's employer-employee relationships are not captured by the conventional employment relationship, where many individuals performing employment-type duties are increasingly performed by paid or unpaid interns, apprentices, volunteers, "contract employees" and individuals working full- or part-time in the "gig economy" or remotely. Not only should these individuals have the same protections as traditional employees, they often have far less bargaining power and may be even more vulnerable to discrimination than the traditional employee. The ACLU of RI therefore supports this revised definition. Similar language appears in the Rhode Island Whistleblowers' Protection Act, RI General Laws §28-50-2(2), which provides "One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied."

In §28-50-2(1) of the Whistleblowers' Act, the language is even clearer that "employee" includes so-called "independent contractors," a status increasingly used by companies.

House 5854 also amends the definition of "employer" in §28-5-6(8)(i) to expand the reach of the RI-FEPA to employers with one (1) or more employees instead of the current four (4) or more employees. This expansion is likewise in keeping with the goal of providing protections to all persons serving in an employment relationship. The current restriction of the RI-FEPA to companies with four or more employees means that those likely to be in the least structured and most vulnerable relationship, from the standpoint of the employee, and in the smallest business, from the standpoint of the employer, are foreclosed from access to the less expensive and confidential investigative and adjudicative processes of the Human Rights Commission and are left with the only recourse of more expensive and immediately public court proceedings, or none at all.

The expansion of jurisdiction of the Human Rights Commission to all Rhode Island employers, instead of those with four or more employees, is also consistent with the expansion of the Workers' Compensation Act, RI General Laws §§28-29-5 and 28-29-6, which was extended to reach all employers with at least one employee, instead of four or more, in 1998, twenty years ago. This is long overdue.

The ACLU urges passage of this important legislation.