

2022 Regular Session

HOUSE BILL NO. 1067 (Substitute for House Bill No. 241 by Representative Riser)

BY REPRESENTATIVE RISER

LABOR: Provides relative to the Fresh Start Proper Worker Classification Initiative and the Voluntary Disclosure Program

1 AN ACT

2 To amend and reenact the heading of Part XIII of Chapter 11 of Title 23 of the Louisiana

3 Revised Statutes of 1950, R.S. 23:1771(A), 1773, and 1775(B) and (C)(2), and R.S.

4 47:1508, to enact R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4, and to repeal R.S.

5 23:1772, 1774, and 1776, relative to the Fresh Start Proper Worker Classification

6 Initiative and the Voluntary Disclosure Program; to provide for definitions; to

7 provide for eligibility requirements for participation in the Voluntary Disclosure

8 Program; to provide for the payment of unemployment taxes and penalties; to

9 provide for withholding taxes, interest, and penalties; to provide for compliance with

10 federal laws and regulations; to provide for a safe harbor; to provide for

11 unemployment interest; to provide for a public records exception; to require the

12 Department of Revenue to promulgate rules and regulations; and to provide for

13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. The heading of Part XIII of Chapter 11 of Title 23 of the Louisiana

16 Revised Statutes of 1950, R.S. 23:1771(A), 1773, and 1775(B) and (C)(2) are hereby

17 amended and reenacted and R.S. 23:1775(F) is hereby enacted to read as follows:

18 PART XIII. ~~FRESH START PROPER WORKER CLASSIFICATION INITIATIVE~~

19 ~~AND~~ VOLUNTARY DISCLOSURE PROGRAM

20 §1771. Definitions

1 ~~A.~~ For the purposes of this Part, the following terms have the meanings
2 ascribed to them:

3 (1) "Applicant" means any association, corporation, estate, firm, individual,
4 joint venture, limited liability company, partnership, receiver, syndicate, trust, or any
5 other entity, combination, or group that submits or arranges through a representative
6 for the submission of an application to request a voluntary disclosure agreement for
7 a tax administered by the ~~department~~ commission. ~~If the application is submitted~~
8 ~~through a representative, anonymity of the applicant can be maintained until the~~
9 ~~voluntary disclosure agreement is executed by the taxpayer and the secretary of the~~
10 ~~Louisiana Workforce Commission.~~

11 (2) "Application" means a completed application to request a voluntary
12 disclosure agreement and all supplemental information including but not limited to
13 cover letters, schedules, reports, and any other documents that provide evidence of
14 the applicant's qualification for a voluntary disclosure agreement. Supplemental
15 information requested by the ~~Department of Revenue and Louisiana Workforce~~
16 ~~Commission~~ commission and timely provided by the applicant shall be considered
17 part of the application.

18 (3) "Application date" means the date a fully completed application
19 requesting a voluntary disclosure agreement is received by the ~~department~~
20 commission. Supplemental information requested by the department and timely
21 provided by the applicant shall not extend or delay the application date.

22 (4) ~~"Delinquent penalty" means any specific penalty imposed as a result of~~
23 ~~the failure of the taxpayer to timely make any required return or payment~~
24 "Commission" means the Louisiana Workforce Commission.

25 (5) "Look-back period" means a period for which a qualified applicant
26 agrees to disclose and pay the tax and ~~interest~~ other amounts due. ~~The look-back~~
27 ~~period shall include the current calendar year up to the date of registration with the~~
28 ~~Department of Revenue and Louisiana Workforce Commission and the one~~
29 ~~immediately preceding calendar year. For discontinued, acquired, or merged entities,~~

1 ~~the look-back period shall include undisclosed liabilities in the last calendar year in~~
2 ~~which the qualified applicant had nexus within this state and the one immediately~~
3 ~~preceding calendar year~~ In accordance with the Federal Unemployment Tax Act
4 (FUTA), 26 U.S.C. §3303(a), the look-back period shall include the entire three-year
5 experience rating period for unemployment taxes for the commission.

6 (6) "Penalty" means any specific penalty imposed as a result of the failure
7 of the taxpayer to correctly classify a worker or class of workers, if not otherwise
8 specifically excluded.

9 (7) "Secretary" means the secretary of the Louisiana Workforce
10 Commission.

11 §1773. Louisiana Voluntary Disclosure Program

12 A.(1) The Louisiana Voluntary Disclosure Program is established as a
13 process of reporting undisclosed liabilities for ~~withholding taxes administered by the~~
14 ~~Department of Revenue and~~ unemployment taxes administered by the Louisiana
15 Workforce Commission that would have been due for workers who were not
16 classified as employees. The Voluntary Disclosure Program authorizes taxpayers to
17 ~~anonymously~~ confidentially enter into agreements and voluntarily pay
18 unemployment taxes and penalties with no ~~penalty interest~~.

19 (2) In order to be admitted to the program, an employer shall obtain and
20 produce a certificate proving he has obtained workers' compensation coverage for
21 his employees.

22 (3) The following employers shall not be eligible to participate in the
23 program:

24 (a) Employers who are currently under audit concerning the classification
25 of the classes of workers by the Internal Revenue Service, the United States
26 Department of Labor, or a state government entity.

27 (b) Employers who are contesting in court or in an administrative proceeding
28 the classification of the class or classes of workers from a previous audit by the

1 Internal Revenue Service, the United States Department of Labor, the Louisiana
2 Department of Revenue, or the Louisiana Workforce Commission.

3 (4) No worker who performs services that are statutorily excluded from the
4 definition of covered employment provided for in R.S. 23:1472 shall be eligible for
5 reclassification as an employee.

6 (5) The provisions of this Section shall not apply to either of the following:

7 (a) Any service performed in the employ of a state, and political subdivision
8 of the state, or of an Indian tribe, or any instrumentality of the state, any political
9 subdivision of the state, or any Indian tribe, which is wholly owned by one or more
10 states, political subdivisions, or Indian tribes, but only if the service is excluded from
11 employment as defined in the Federal Unemployment Tax Act.

12 (b) Any service performed by an individual in the employ of a religious,
13 charitable, educational, or other organization, but only if the service is excluded from
14 employment as defined in the Federal Unemployment Tax Act.

15 B. The Louisiana Workforce Commission, ~~in consultation with the~~
16 ~~Department of Revenue~~ shall promulgate rules and regulations necessary for the
17 administration of the Louisiana Voluntary Disclosure Program.

18 §1775. Voluntary Disclosure Agreements; unemployment tax

19 * * *

20 B. After all unemployment tax and interest penalties due for the look-back
21 period have been paid, the ~~delinquent penalties~~ interest due as provided for in R.S.
22 23:1543 shall be waived to the extent permitted by law. No penalties provided for
23 in R.S. 23:1543 or penalties related to fraud or state unemployment tax act dumping
24 provided for in R.S. 23:1539.1 shall be waived.

25 C.

26 * * *

27 (2) The administrator shall compute the ~~interest tax and penalties~~ due for the
28 ~~tax workers~~ disclosed by the applicant and send a schedule by mail or email to the
29 applicant or his representative showing the amount of tax and ~~interest penalties~~ due.

1 The applicant shall submit payment of the full amount of the ~~interest tax and~~
2 penalties within thirty calendar days from the postmark or email date of the schedule
3 or, if applicable, within any extension of time granted by the administrator. If
4 payment of the full amount due has not been received at the expiration of such time,
5 the administrator may void the agreement.

6 * * *

7 F. Notwithstanding any other provisions of state or federal law to the
8 contrary, waiver of unemployment interest shall not be available for the Voluntary
9 Disclosure Program when the employer has engaged in, is under audit for, or has a
10 case on appeal pertaining to willfully misclassifying workers under Title 23 of the
11 Louisiana Revised Statutes of 1950 or when the employer is engaged in, under audit
12 for, or has a case on appeal pertaining to state unemployment tax act dumping
13 provided for in R.S. 23:1539.1. No waiver of penalties provided for in R.S. 23:1543
14 shall be made for either program. Additionally, under 26 U.S.C. §3304 of the
15 Federal Unemployment Tax Act, 42 U.S.C. §503, the state unemployment tax act
16 Dumping Prevention Act of 2004, as required in R.S. 23:1664, and as per the United
17 States Department of Labor's directive to the Louisiana Workforce Commission,
18 employer liability for SUTA dumping penalties and fraud penalties shall not be
19 waived under federal law under any circumstances.

20 Section 2. R.S. 47:1508 is hereby amended and reenacted and R.S. 47:1576.3 and
21 1576.4 are hereby enacted to read as follows:

22 §1508. Confidentiality of tax records

23 * * *

24 B. Nothing herein contained shall be construed to prevent:

25 * * *

26 (28) The sharing or furnishing, in the discretion of the secretary, of
27 information to the Louisiana Workforce Commission for the purposes of
28 determining, investigating, or prosecuting fraud related to all areas administered by
29 the Louisiana Workforce Commission or for the purposes of reviewing and

1 (7) "Secretary" means the secretary of the Department of Revenue.

2 B. The Fresh Start Proper Worker Classification Initiative is optional and
3 provides a taxpayer with an opportunity to voluntarily reclassify his worker as an
4 employee for a future tax period. To be eligible, a taxpayer shall meet all of the
5 following requirements:

6 (1) Apply to the Fresh Start Proper Worker Classification Initiative between
7 January 1, 2023 and December 31, 2023.

8 (2) Produce a certificate of proof of workers' compensation coverage for the
9 employee.

10 (3) Enter into a closing agreement with the department.

11 C. The Fresh Start Proper Worker Classification Initiative applies to
12 taxpayers that are currently treating their workers as independent contractors or other
13 nonemployees and want to prospectively treat the workers as employees. To be
14 eligible, a taxpayer shall have consistently treated the workers for the previous three
15 years as nonemployees, and shall have filed any required Form 1099-MISC, Form
16 1099-NEC, or equivalent form with the Internal Revenue Service with respect to
17 those workers, consistent with the nonemployee treatment.

18 D.(1) An eligible taxpayer that participates in the Fresh Start Proper Worker
19 Classification Initiative agrees to prospectively treat the class or classes of workers
20 identified in the application as employees for future tax periods and is not liable for
21 any withholding tax or related interest and penalties with respect to any amounts paid
22 to any workers before the date on which the taxpayer is accepted for participation in
23 the Fresh Start Proper Worker Classification Initiative.

24 (2) An eligible taxpayer shall not be entitled to any relief from unemployment
25 tax, interest, or penalties pursuant to this Section, but may seek relief in accordance
26 with R.S. 23:1775.

27 (3) An eligible taxpayer may request that the commission develop with the
28 taxpayer a reasonable payment schedule for unemployment taxes owed for the look-
29 back period as defined in R.S. 23:1771. However, payment of all outstanding

1 unemployment liabilities shall not be required prior to acceptance of the taxpayer's
2 application.

3 E.(1) An eligible taxpayer that wishes to participate in the Fresh Start Proper
4 Worker Classification Initiative shall submit an application for participation in the
5 program to the department on a form prescribed by the secretary. The department
6 shall contact the taxpayer or authorized representative to complete the application
7 process once it has reviewed the application and verified the taxpayer's eligibility.

8 (2) An accepted application constitutes a joint closing agreement between
9 the taxpayer and the department.

10 (3)(a) The closing agreement shall constitute confirmation by the taxpayer
11 to treat the class or classes of workers identified in the application as employees and
12 to comply with any and all reporting and payment obligations related to withholding
13 tax, unemployment tax, and workers' compensation coverage for the period
14 subsequent to the effective date of the agreement.

15 (b) Notwithstanding any provision of law to the contrary, any reclassification
16 of a class or classes of workers performing the following services shall be limited to
17 withholding tax and shall not be eligible for reclassification as an employee for
18 purposes of unemployment tax:

19 (i) Any services that are statutorily excluded from the definition of
20 employment provided for in R.S. 23:1472.

21 (ii) Any service performed in the employ of a state, and political subdivision
22 of the state, or of an Indian tribe, or any instrumentality of the state, any political
23 subdivision of the state, or any Indian tribe, which is wholly owned by one or more
24 states, political subdivisions, or Indian tribes, but only if the service is excluded from
25 employment as defined in the Federal Unemployment Tax Act.

26 (iii) Any service performed by an individual in the employ of a religious,
27 charitable, educational, or other organization, but only if the service is excluded from
28 employment as defined in the Federal Unemployment Tax Act.

1 (4) The closing agreement shall become effective on the date that the
2 taxpayer receives notice from the department that the taxpayer's application is
3 accepted.

4 (5) Failure to comply with the terms of the closing agreement and this
5 Section may nullify the acceptance of the taxpayer's application. If an acceptance
6 is nullified, the taxpayer shall become liable for withholding tax, interest, and
7 penalties determined to be due for prior periods.

8 (6) The secretary may disclose any information provided in an application
9 or in support of an application to the commission in order to coordinate the review
10 and consideration of the application. Any information furnished shall be considered
11 confidential and privileged and held by the commission as provided for in R.S.
12 47:1508.

13 F. The following employers shall not be eligible to participate in the
14 program:

15 (1)(a) Employers that are currently under audit concerning the classification
16 of the classes of workers by the Internal Revenue Service, the United States
17 Department of Labor, or by a state government entity.

18 (b) Employers who are contesting in court the classification of the class or
19 classes of workers from a previous audit by the Internal Revenue Service, the United
20 States Department of Labor, the department, or the commission.

21 (c) Employers who have withheld state income taxes from the amounts paid
22 to any worker and who have not remitted the tax to the department.

23 (2) For the purposes of Subparagraphs (a) and (b) of this Paragraph, a
24 taxpayer that is a member of an affiliated group within the meaning of §1504(a) of
25 the Internal Revenue Code shall be ineligible if any member of the affiliated group
26 is under an employment, withholding, or unemployment tax audit.

27 G. A finding that a taxpayer failed to provide information or documentation
28 to reveal a fact material to an eligibility determination or made a material

1 misrepresentation as to any eligibility requirement shall immediately nullify the
2 acceptance of the taxpayer's application.

3 H. The department shall have the authority to promulgate rules and
4 regulations for the administration of the Fresh Start Proper Worker Classification
5 Initiative. Additionally, the department shall promulgate rules and regulations no
6 later than July 1, 2023 establishing a voluntary disclosure program for reporting
7 undisclosed liabilities for withholding taxes that would have been due for workers
8 who were not classified as employees.

9 §1576.4. Safe harbor

10 Any putative employer meeting the requirements provided for in this Section
11 shall not owe withholding tax, interest, or penalties otherwise due for the workers to
12 whom these requirements apply:

13 (1) Reporting consistency. The putative employer timely filed all required
14 federal tax and information returns for independent contractors who were paid six
15 hundred dollars or more, such as Form 1099-MISC or Form 1099-NEC. Relief is not
16 available for any worker for whom the employer did not file the required information
17 return.

18 (2) Substantive consistency. The putative employer and any predecessor
19 always treated the worker as an independent contractor; however, if any similar
20 worker was treated as an employee, relief is not available.

21 (3)(a) Reasonable basis. The putative employer had a reasonable basis for
22 not treating the worker as an employee including any of the following:

23 (i) Reliance on a court case or Internal Revenue Service ruling.

24 (ii) The putative employer was previously audited and the Internal Revenue
25 Service considered employment taxes but did not reclassify the workers.

26 (iii) Independent contractor treatment is common in the putative employer's
27 industry for workers providing similar services.

28 (iv) The putative employer and any predecessor always treated the worker
29 as an independent contractor.

Proposed law provides that the provisions of proposed law shall not apply to any of the following:

- (1) Any service performed in the employ of a state, and political subdivision of the state, or of an Indian tribe, or any instrumentality of the state, any political subdivision of the state, or any Indian tribe, which is wholly owned by one or more states, political subdivisions, or Indian tribes, but only if the service is excluded from employment as defined in federal law.
- (2) Any service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from employment as defined in federal law.

Present law provides that after all unemployment tax and interest due for the look-back period have been paid, the delinquent penalties shall be waived.

Proposed law provides that after all unemployment tax and penalties due for the look-back period have been paid, interest due provided for in present law shall be waived to the extent permitted by law. Proposed law further provides that no penalties provided for in present law or penalties related to fraud shall be waived.

Proposed law provides that waiver of unemployment interest shall not be available for the program when the employer has engaged in, is under audit for, or has a case on appeal pertaining to willfully misclassifying workers or when the employer is engaged in, under audit for, or has a case on appeal pertaining to State Unemployment Tax Act (SUTA) dumping provided for in present law.

Proposed law provides that employer liability for SUTA dumping penalties and fraud penalties shall not be waived under federal law under any circumstances.

FRESH START PROPER WORKER CLASSIFICATION INITIATIVE

Present law provides that the sharing or furnishing, in the discretion of the secretary of the La. Dept. of Revenue, of information to the LWC for the purposes of determining, investigating, or prosecuting fraud related to all areas administered by the LWC. Present law further provides that any information shared or furnished shall be considered and held confidential and privileged by the LWC.

Proposed law extends present law to include information that is disclosed on applications for the initiative to be considered and held confidential and privileged. Proposed law otherwise retains present law.

Proposed law provides definitions for applicant, application, application date, class of workers, commission, department, and secretary.

Proposed law provides that the Fresh Start Proper Worker Classification Initiative (the initiative) is optional and provides a taxpayer with an opportunity to voluntarily reclassify a worker as an employee for a future tax period. Proposed law further provides that in order to be eligible, a taxpayer shall meet all of the following requirements:

- (1) Apply to the Fresh Start Proper Worker Classification Initiative between Jan. 1, 2023 and Dec. 31, 2023.
- (2) Produce a certificate of proof of workers' compensation coverage for the employee.
- (3) Enter into a closing agreement with the La. Dept. of Revenue.

Proposed law provides that an eligible taxpayer that participates in the initiative agrees to prospectively treat the class of classes of workers identified in the application as employees for future tax periods and is not liable for any withholding tax or related interest and penalties with respect to any amounts paid to any workers before the date on which the taxpayer is accepted for participation in the initiative.

Proposed law provides that an eligible taxpayer shall not be entitled to any relief from unemployment tax, interest, or penalties pursuant to proposed law, but may seek relief in accordance with present law.

Proposed law provides that an eligible taxpayer may request that the LWC develop with the taxpayer a reasonable payment schedule for unemployment taxes owed for the look-back period. Proposed law further provides that payment of all outstanding unemployment liabilities shall not be required prior to acceptance of the taxpayer's application.

Proposed law provides that an eligible taxpayer that wishes to participate in the initiative shall submit an application for participation in the program to the department on a form prescribed by the secretary of the La. Dept. of Revenue. Proposed law further provides that La. Dept. of Revenue shall contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility.

Proposed law provides that an accepted application constitutes a joint closing agreement between the taxpayer and the La. Dept. of Revenue.

Proposed law provides that the closing agreement shall become effective on the date that the taxpayer receives notice from the La. Dept. of Revenue that the taxpayer's application is accepted.

Proposed law provides that failure to comply with the terms of the closing agreement and proposed law may nullify the acceptance of the taxpayer's application. Proposed law further provides that if an acceptance is nullified, the taxpayer shall become liable for withholding tax, interest, and penalties determined to be due for prior periods.

Proposed law provides that the following employers shall not be eligible to participate in the program:

- (1) Employers who are currently under audit concerning the classification of the classes of workers by the IRS, the U.S. Dept. of Labor, or by a state government entity.
- (2) Employers who are contesting in court the classification of the class or classes of workers from a previous audit by the IRS, the U.S. Dept. of Labor, the La. Dept. of Revenue, or LWC.
- (3) Employers who have withheld state income taxes from the amounts paid to any worker and who have not remitted the tax to the La. Dept. of Revenue.
- (4) For the purposes of proposed law, a taxpayer that is a member of an affiliated group defined under federal law shall be ineligible if any member of the affiliated group is under an employment, withholding, or unemployment tax audit.

Proposed law provides that the La. Dept. of Revenue shall have the authority to promulgate rules and regulations for the administration of the initiative. Proposed law further provides that the La. Dept. of Revenue shall promulgate rules and regulations establishing a voluntary disclosure program for reporting undisclosed liabilities for withholding taxes no later than July 1, 2023.

(Amends the heading of Part XIII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, R.S. 23:1771(A), 1773, 1775(B) and (C)(2) and R.S. 47:1508; Adds R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4; Repeals R.S. 23:1772, 1774, and 1776)