

Prior law, relative to unemployment compensation, provided that services performed by an individual for wages or under any contract of hire, written or oral, express or implied, will be deemed to be employment, for the purposes of unemployment insurance, unless and until it is shown to the satisfaction of the administrator that all of the following are met:

1. Such individual has been and will continue to be free from any control or direction over the performance of such services both under his contract and in fact.
2. Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed.
3. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

New law provides that, if the administrator determines, after investigation, that an employer failed to properly classify an individual as an employee and failed to pay unemployment contributions but the failure was not knowing or willful, the employer will be issued a written warning as evidence that the employer has been cited for a first offense of misclassification. No administrative penalty shall be assessed.

New law further provides that, if the administrator determines, after investigation, that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, after June 30, 2013, and subsequent to the issuance of a written warning, failed to properly classify an individual as an employee and failed to pay contributions in accordance with the law then an administrative penalty of up to \$250 per individual shall be assessed. Thereafter, any misclassification shall be subject to a penalty of up to \$500 per individual.

New law provides that, in determining the amount of the penalty imposed, the administrator will consider factors including previous violations by the employer, the seriousness of the violation, the good faith of the employer, and the size of the employer's business.

New law provides that, if, after an employer has been issued a written warning and subsequently found, on two or more separate occasions, to have failed to properly classify an individual as an employee, the employer may also be subject to an additional fine of not less than \$100 nor more than \$1,000, or imprisoned for not less than 30 days nor more than 90 days, or both.

New law provides that, for the purpose of misclassification, each employee so misclassified will constitute a separate offense.

New law provides that no determination will be final or effective, and no resulting administrative penalty will be assessed, unless the administrator first provides the employer with written notification by certified mail of the determination, including the amount of the proposed contributions, interest, and penalties determined to be due and of the opportunity to request a fair hearing, of which a record will be made within 10 days of the mailing of the notice. If the employer does not request a hearing within the 10-day period, the determination will become final and effective, and the contributions, interest, and penalties due will be assessed.

New law provides that if a timely hearing request is made, the findings and conclusions of the hearing officer will be appealable by judicial review as a final assessment.

New law provides that upon a final determination that an employer knowingly or willfully failed to properly classify an individual as an employee and failed to pay unemployment, then the employer will be prohibited from contracting with any state agency or political subdivision of the state for a period of three years from the date upon which the determination becomes final.

New law provides that the division of administration will maintain and place the employer on a list of such employers and make that list available to state agencies and political subdivisions of the state.

New law provides that every employer will post in a prominent and accessible location at each of its business premises a poster provided by the administrator that describes the responsibilities of independent contractors to pay taxes as required by state and federal laws, the rights of employees to workers' compensation and unemployment benefits, protections against retaliation, and the penalties if the employer fails to properly classify an individual as an employee.

New law provides that the notice will also contain contact information for individuals to file complaints or obtain information regarding employment classification.

New law exempts from the statutory requirements of unemployment misclassification owner operators. New law defines owner operators as a person who provides trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers which transportation services include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler.

Effective August 1, 2012.

(Amends R.S. 23:1761(9); adds R.S. 23:1472(12)(H)(XXII) and 1711(G))