

2020 Regular Session

SENATE BILL NO. 460

BY SENATOR REESE

UNEMPLOYMENT COMP. Provides for "Flexible Work for All Act of 2020". (8/1/20)

AN ACT

To enact Part IV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:971 through 975, and to repeal R.S. 23:1472(12)(E), relative to employment; to provide for employment status; to provide for flexible working conditions for certain persons; to provide for participation in the flexible work program; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:971 through 975, is hereby enacted to read as follows:

PART IV. FLEXIBLE WORK FOR ALL ACT

§971. Short title

This Part shall be known and may be cited as the "Flexible Work for All Act of 2020".

§972. Purpose

This purpose of this Part is to promote work opportunities for individuals with disabilities, provide greater flexibility for work hours, utilize workers' unique skill sets, address labor shortages, create additional

opportunities for workers in rural areas, and bring clarity, certainty, and uniformity under state law with regard to differentiating employees from independent contractors, and by establishing objective and uniform standards for making that distinction.

§973. Definition

As used in this Part, "employment status" means the status of an individual as an employee or independent contractor for employment purposes, including without limitation wages, taxation, and workers' compensation issues.

§974. Determination of employment status

For purposes of this Part, an employer or agency charged with determining the employment status of an individual shall use the twenty factor test enumerated by the Internal Revenue Service in Rev. Rul. 87-41, 1987-1 C.B. 296, in making its determination and shall consider all of the following whether:

(1) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work.

(2) A worker is required to receive training, including without limitation through one of more of the following:

(a) Working with an experienced employee.

(b) Corresponding with the person for whom a service is performed.

(c) Attending meetings.

(d) Other training methods.

(3) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed.

(4) A worker's services are required to be performed personally, indicating an interest in the methods used and the results.

(5) A person for whom a service is performed hires, supervises, or pays

1 assistants.

2 (6) A continuing relationship exists between a worker performing
3 services and a person for whom a service is performed.

4 (7) A worker performing a service has hours set by the person for whom
5 a service is performed.

6 (8) A worker is required to devote substantially full time to the business
7 of the person for whom a service is performed, indicating the person for whom
8 a service is performed has control over the amount of time the worker spends
9 working and by implication restricts the worker from obtaining other gainful
10 work.

11 (9)(a) The work is performed on the premises of the person for whom
12 a service is performed, or the person for whom a service is performed has
13 control over where the work takes place.

14 (b) A person for whom a service is performed has control over where the
15 work takes place if the person has the right to either:

16 (i) Compel the worker to travel a designated route.

17 (ii) Compel the worker to canvass a territory within a certain time.

18 (iii) Require that the work be done at a specific place, especially if the
19 work could be performed elsewhere.

20 (10) A worker is required to perform services in the order or sequence
21 set by the person for whom a service is performed or the person for whom a
22 service is performed retains the right to set the order or sequence.

23 (11) A worker is required to submit regular oral or written reports to
24 the person for whom a service is performed.

25 (12) A worker is paid by the hour, week, or month except when he or she
26 is paid by the hour, week, or month only as a convenient way of paying a lump
27 sum agreed upon as the cost of a job.

28 (13) A person for whom a service is performed pays the worker's
29 business or traveling expenses.

1 (14) A person for whom a service is performed provides significant tools
2 and materials to the worker performing services.

3 (15) A worker invests in the facilities used in performing the services.

4 (16) A worker realizes a profit or suffers a loss as a result of the services
5 performed that is in addition to the profit or loss ordinarily realized by an
6 employee.

7 (17) A worker performs more than de minimis services for more than
8 one person or firm at the same time, unless the persons or firms are part of the
9 same service arrangement.

10 (18) A worker makes his or her services available to the general public
11 on a regular and consistent basis.

12 (19) A person for whom a service is performed retains the right to
13 discharge the worker.

14 (20) A worker has the right to terminate the relationship with the person
15 for whom a service is performed at any time he or she wishes without incurring
16 liability.

17 §975. Exception

18 This Part shall not apply to an individual who provides services as a
19 leased-operator or an owner-operator of a motor vehicle or vehicles under
20 contract to a common carrier doing an interstate business while engaged in
21 interstate commerce regardless of whether the common law relationship of
22 master and servant exists.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry J. Guillot.

SB 460 Original

DIGEST
2020 Regular Session

Reese

Proposed law enacts the "Flexible Work for All Act of 2020" to promote work opportunities for individuals with disabilities, provide greater flexibility for work hours, utilize workers' unique skill sets, address labor shortages, create additional opportunities for workers in rural areas, and bring clarity, certainty, and uniformity under state law with regard to differentiating employees from independent contractors, and by establishing objective and uniform standards for making that distinction.

Defines, "employment status" as the status of an individual as an employee or independent contractor for employment purposes, including without limitation wages, taxation, and workers' compensation issues.

Requires that for purposes of proposed law, an employer or agency charged with determining the employment status of an individual use the 20 factor test enumerated by the Internal Revenue Service in Rev. Rul. 87-41, 1987-1 C.B. 296, in making its determination and consider all of the following whether:

- (1) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work.
- (2) A worker is required to receive training, including without limitation through one of more of the following:
 - (a) Working with an experienced employee.
 - (b) Corresponding with the person for whom a service is performed.
 - (c) Attending meetings.
 - (d) Other training methods.
- (3) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed.
- (4) A worker's services are required to be performed personally, indicating an interest in the methods used and the results.
- (5) A person for whom a service is performed hires, supervises, or pays assistants.
- (6) A continuing relationship exists between a worker performing services and a person for whom a service is performed.
- (7) A worker performing a service has hours set by the person for whom a service is performed.
- (8) A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work.
- (9)
 - (a) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.
 - (b) A person for whom a service is performed has control over where the work takes place if the person has the right to either:
 - (i) Compel the worker to travel a designated route.
 - (ii) Compel the worker to canvass a territory within a certain time.
 - (iii) Require that the work be done at a specific place, especially if the work could be performed elsewhere.
- (10) A worker is required to perform services in the order or sequence set by the person

for whom a service is performed or the person for whom a service is performed retains the right to set the order or sequence.

- (11) A worker is required to submit regular oral or written reports to the person for whom a service is performed.
- (12) A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job.
- (13) A person for whom a service is performed pays the worker's business or traveling expenses.
- (14) A person for whom a service is performed provides significant tools and materials to the worker performing services.
- (15) A worker invests in the facilities used in performing the services.
- (16) A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee.
- (17) A worker performs more than de minimis services for more than one person or firm at the same time, unless the persons or firms are part of the same service arrangement.
- (18) A worker makes his or her services available to the general public on a regular and consistent basis.
- (19) A person for whom a service is performed retains the right to discharge the worker.
- (20) A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability.

Provides that proposed law shall not apply to an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce regardless of whether the common law relationship of master and servant exists.

Present law, relative to unemployment compensation, defines "employment", in part, as services performed by an individual for wages or under any contract of hire, written or oral, express or implied, shall be deemed to be employment subject to present law unless and until it is shown to the satisfaction of the administrator all of the following:

- (1) The 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) The 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) The individual is customarily engaged in an independently established trade, occupation, profession or business.

Proposed law repeals present law.

Effective August 1, 2020.

(Adds R.S. 23:971-975; repeals R.S. 23:1472.(E))