
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 76 Original

2020 Second Extraordinary Session

Luneau

Present law provides for withholding of taxes on wages paid for services performed by an employee for his employer.

Proposed law defines "misclassified employee" an employee from whom no tax was deducted or withheld as required by present law due to the employer's failure to properly classify the individual as an employee.

Proposed law provides for a penalty for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee. The penalty is determined by multiplying the highest Louisiana individual income tax rate (currently 6%) by the total wages paid to the misclassified employee during the period. However, the penalty may be reduced if the misclassified employee paid Louisiana income tax on these wages.

Proposed law provides for a penalty for contractors who knew or had reason to know that amounts paid to its subcontractor included labor costs of misclassified employees equal to 25% of the penalty for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee.

Present law requires every employer who withholds taxes to file a quarterly withholding return and an annual reconciliation report for all employees for whom taxes are withheld and provides for a five dollar per return penalty for late returns or reports with an overall annual maximum penalty of \$7,500.

Proposed law retains present law reporting requirements and increases the late filing penalty from \$5 to \$25 for each late return, report, or receipt and increases the annual maximum penalty from \$7,500 to \$37,500.

Proposed law provides a specific penalty for nonfiling of withholding returns, reports, and receipts or failure to remit withholding where the failure to file or remit is due to the misclassification of an employee. The penalty is equal to 25% of the amount of withholding tax that should have been remitted.

Effective January 1, 2021.

(Amends R.S. 47:111(A)(10) and (E), 113, and 114(F)(2) and (3); adds R.S. 47:111(F), 113.1, and 114(F)(4))