

GREEN SHEET REDIGEST

HB 705

2021 Regular Session

Riser

UNEMPLOYMENT COMP: Provides relative to the misclassification of employees and a criteria for the classification of employees

DIGEST

Present law provides that if, after an investigation, the administrator determines that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, failed to properly classify an individual as an employee and failed to pay contributions and that failure was not knowingly or willfully, the employer will be issued a written warning. Present law further provides that the written warning shall constitute as evidence that the employer has been cited for a first offense for misclassification.

Proposed law repeals present law.

Present law provides that the administrator may assess an administrative penalty of not more than \$250 per each employer who has misclassified an employee and failed to pay contributions.

Proposed law changes the administrative penalty amount from \$250 to \$500, but waives this penalty if the employer becomes compliant within 60 days of the citation for the first offense.

Proposed law provides that after the first offense, the administrator shall assess an administrative penalty of \$1,000 per each individual who is misclassified.

Present law provides that an employer who fails to properly classify an individual as an employee and pay contributions, shall be subject to an administrative penalty of not more than \$500.

Proposed law changes the administrative penalty amount from \$500 to \$2,500.

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

Proposed law repeals present law.

Proposed law provides that one-half of any administrative penalty assessed pursuant to proposed law shall be deposited into the state's unemployment trust fund.

Proposed law provides that for the purposes of proposed law, an independent contractor means any person or organization, including a sole proprietor, partnership, limited liability company, corporation, or other entity that undertakes orally or in writing, to perform services for or in connection with another party in a manner consistent with the requirements of proposed law.

Proposed law provides that if an individual or entity meets at least six of 11 criteria listed in proposed law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work, if an individual or entity controls the performance, methods, or processes and meets certain criteria.

Proposed law provides that any contracting party or independent contractor may rely on the provisions of proposed law to establish an employment or independent contractor relationship.

Proposed law provides that proposed law shall not apply to any motor carrier who pursuant to a contract with an owner operator as defined in present law undertakes the performance of services as a motor carrier, any service excluded from the term "employment" as provided in present law, and any service performed for a nonprofit organization that is exempt from taxation under federal law.

(Amends R.S. 23:1711(G)(1); adds R.S. 23:1711.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the engrossed bill

1. Makes technical changes.
2. Waives the administrative penalty for employers who become compliant within 60 days of the citation for the first offense.
3. Changes the amount of administrative penalties assessed to be deposited into the state's employment trust fund from all penalties assessed to one-half of penalties assessed.
4. Provides for there to be a rebuttable presumption of an independent contractor, an individual or entity must control the performance, methods, or processes and meet certain criteria.
5. Changes the criteria to establish the presumption by removing the provision that the contracting party does not direct or oversee the performance, methods, or processes the individual or entity uses to perform services.
6. Provides that proposed law does not apply to any service excluded from the term "employment" and any service performed for a 501(C)(3) nonprofit organization.