

2016 Regular Session

HOUSE BILL NO. 665

BY REPRESENTATIVE SMITH

UNEMPLOYMENT COMP: Provides for an increase in the administrative penalties assessed for the misclassification of employees

1 AN ACT

2 To amend and reenact R.S. 23:1711(G)(1), relative to unemployment compensation; to
3 provide for the classification of employees; to increase the administrative penalties
4 for the misclassification of employees; to provide relative to the failure to pay
5 contributions; to increase penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1711(G) is hereby amended and reenacted to read as follows:

8 §1711. False statements or representations; failure to file reports or maintain
9 records; duties of officers and agents; presumptive proof; penalties

10 * * *

11 G. Misclassification of employees as independent contractors.

12 (1)(a) ~~Written warning.~~ Administrative penalties.

13 (a) If the administrator determines; after an initial investigation; that an
14 employer; or any officer, agent, superintendent, foreman, or employee of the
15 employer, failed to properly classify an individual as an employee in accordance
16 with this Chapter, and failed to pay contributions required by this Chapter and the
17 failure was knowing or willful, ~~but the failure was not knowing or willful~~, the
18 employer shall be issued a written warning as evidence that the employer has been
19 cited for a first offense of misclassification. ~~Such warning shall constitute a~~
20 ~~determination that any workers identified therein are employees, and all resulting~~

1 contributions, interest and penalties shall be due, and shall be appealable as provided
2 in this Section. ~~However, no administrative penalties shall be due.~~ then, in addition
3 to any contributions, interest, and penalties otherwise due, the administrator may
4 assess an administrative penalty of not more than five thousand dollars.

5 (b) ~~Administrative penalties.~~ If the administrator determines; after
6 investigation, that an employer, or any officer, agent, superintendent, foreman, or the
7 second investigation; that an employer; or any officer, agent, superintendent,
8 foreman, or employee of the employer, ~~after June 30, 2013, and subsequent to the~~
9 ~~issuance of a written warning,~~ failed to properly classify an individual as an
10 employee and failed to pay contributions in accordance with this Chapter, then, in
11 addition to any contributions, interest, and penalties otherwise due, the administrator
12 may assess an administrative penalty of not more than ~~two hundred fifty dollars~~ ten
13 thousand dollars per each such individual.

14 (c) ~~Thereafter, any such~~ After any subsequent investigation, any failure by
15 an employer to properly classify an individual as an employee and pay contributions
16 due shall be subject to an administrative penalty of not more than ~~five hundred~~
17 twenty-five thousand dollars per each such individual. In determining the amount
18 of the administrative penalty imposed, the administrator shall consider factors
19 including previous violations by the employer, the seriousness of the violation, the
20 good faith of the employer, and the size of the employer's business.

21 ~~(e)(d) If, (i) If~~ after an employer has been issued a written warning and is
22 subsequently found; on two or more separate occasions; to have failed to properly
23 classify an individual as an employee, the employer may also be subject to an
24 additional fine of not less than ~~one hundred dollars nor more than one thousand~~
25 ~~dollars~~ fifty thousand dollars, or imprisoned for not ~~less than thirty days nor more~~
26 than ninety days, or both. For the purpose of this Subsection, each employee so
27 misclassified shall constitute a separate offense.

28 (ii) In addition to any penalty imposed pursuant to the provisions of
29 Subparagraphs (b) and (c) of this Paragraph, if any employer is subsequently found,

Present law provides that upon a third and subsequent offense of misclassification, the administrator shall assess a penalty of up to \$500 for each misclassified employee, in addition to contributions, interest, and penalties previously owed.

Proposed law changes the penalty for a second offense from up to \$500 to up to \$25,000 per misclassified employee in addition to the contributions, interest, and penalties owed.

Present law requires that the administrator, in determining the amount of penalties, consider previous violations, the seriousness of the violation, the good faith of the employer, and the size of the business. Proposed law retains present law.

Present law provides that upon a subsequent offense of misclassification, the administrator shall assess a penalty between \$100 and \$1,000 or imprisonment between 30 and 90 days or both, for each misclassified employee, in addition to contributions, interest, and penalties previously owed.

Proposed law provides that in addition to any penalties assessed for a second or subsequent offense, an employer is ineligible to receive any state tax rebates to which he is otherwise entitled.

Proposed law changes the penalty for a subsequent offense from a fine between \$100 and \$1,000 or imprisonment between 30 and 90 days or both to a fine up to \$50,000 and imprisonment of not more than 90 days, per misclassified employee in addition to the contributions, interest, and penalties owed.

(Amends R.S. 23:1711(G)(1))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Make technical changes.
2. Require that the misclassification of employees by an employer be knowing and willful.
3. Clarify which penalty is for an initial, second, or subsequent offense.
4. Prohibit an employer who has misclassified employees on two or more occasions from receiving any state tax rebate.