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. <u>Administrative penalties.</u>
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

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contributions, interest and penalties shall be due, and shall be appealable as provided
 in this Section. However, no administrative penalties shall be due. then, in addition
 to any contributions, interest, and penalties otherwise due, the administrator may
 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 <u>twenty-five thousand</u> 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.

(c)(d) If; (i) If after an employer has been issued a written warning and is
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 one hundred dollars nor more than one thousand
dollars fifty thousand dollars, or imprisoned for not less than thirty days nor more
than ninety days, or both. For the purpose of this Subsection, each employee so
misclassified shall constitute a separate offense.

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

1	on two or more separate occasions, to have failed to properly classify an individual
2	as an employee, the employer shall be ineligible to receive any tax rebate from the
3	state to which he was otherwise entitled.
4	(d)(e) No such determination shall be final or effective, and no resulting
5	administrative penalty shall be assessed, unless the administrator first provides the
6	employer with written notification by certified mail of the determination, including
7	the amount of the proposed contributions, interest, and penalties determined to be
8	due and of the opportunity to request a fair hearing, of which a record shall be made
9	within thirty days of the mailing of such the notice. The hearing request may be
10	made by mail, as evidenced by the official postmarked date, or by otherwise timely
11	delivering such appeal. If the employer does not request a hearing within the thirty-
12	day period the determination shall become final and effective, and the contributions,
13	interest, and penalties due shall be assessed.
14	* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 665 Engrossed	2016 Regular Session

Smith

Abstract: Increases the administrative penalties for employers who misclassify employees and fail to pay unemployment insurance contributions.

<u>Present law</u> provides that when it is discovered that an employer has not properly classified employees and has failed to pay contributions, that he shall receive a written warning if there is evidence that his failure to properly classify and pay contributions was not knowing or willful.

<u>Proposed law</u> deletes <u>present law</u> regarding the written warning and instead provides that upon an initial investigation through which it is determined that an employer has knowingly and willfully misclassified employees, in addition to any contributions, interest, and penalties otherwise due, the administrator may assess an administrative penalty of up to \$5,000 per employee.

<u>Present law</u> provides that upon a second offense of misclassification, the administrator shall assess a penalty of up to \$250 for each misclassified employee, in addition to the contributions, interest, and penalties owed.

<u>Proposed law</u> changes the penalty for a second offense <u>from</u> up to \$250 to up to \$10,000 per misclassified employee in addition to the contributions, interest, and penalties owed.

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<u>Present law</u> 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.

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

<u>Present law</u> 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. <u>Proposed law</u> retains <u>present law</u>.

<u>Present law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> changes the penalty for a subsequent offense <u>from</u> a fine between \$100 and \$1,000 or imprisonment between 30 and 90 days or both <u>to</u> 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 <u>House Committee on Labor and Industrial</u> <u>Relations</u> to the <u>original</u> 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.