

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 244

2021 Regular Session

Luneau

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

REVENUE DEPARTMENT. Provides for uniform definitions of independent contractor and employee and for penalties for misclassification of employees. (2/3-CA7s2.1(A)) (1/1/22)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Makes technical changes.
2. Deletes the definitions for "non-qualified applicant", "qualified applicant", and "undisclosed liability" from proposed law.
3. Deletes the reporting requirement for the La. Dept. of Revenue in proposed law.
4. Deletes the motor carrier exception from proposed law.
5. Deletes provisions from proposed law that create the criteria for the classification of an independent contractor.
6. Deletes provisions from proposed law that provide for the misclassification of employees as independent contractors.
7. Provides that in order to be eligible, a taxpayer shall apply to the Fresh Start Proper Worker Classification Initiative between Jan. 1, 2022 and Dec. 31, 2022.
8. Adds that the La. Dept. of Revenue shall have the authority to promulgate rules and regulations for the administration of the Fresh Start Proper Worker Classification Initiative.
9. Adds provisions for safe harbor for putative employers from penalties otherwise due for underpayment of unemployment taxes.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

SB 244 Reengrossed

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Proposed law defines terms for the purposes of proposed law.

Proposed law provides that in order to be eligible, a taxpayer shall meet all of the following requirements:

- (1) Apply to the Fresh Start Proper Worker Classification Initiative between Jan. 1, 2022 and Dec. 31, 2022.
- (2) Produce a certificate of proof of workers' compensation coverage for the employee.
- (3) Enter into a closing agreement with the Louisiana Workforce Commission (LWC) and the La. Dept. of Revenue (DOR).

Proposed law provides that to be eligible a taxpayer must have consistently treated the workers as nonemployees for the previous three years and must have filed all required forms with the IRS with respect to those workers consistent with nonemployee treatment.

Proposed law provides that an eligible taxpayer that participates in the initiative agrees to prospectively treat classes of workers as employees for future tax periods and not be liable

for any withholding tax, unemployment tax, interest or penalties with respect to any workers before the date on which the taxpayer is accepted for participation in the program.

Proposed law requires taxpayers who want to participate in the Fresh Start Proper Worker Classification Initiative to apply with the DOR.

Proposed law provides that the DOR will review the application for eligibility and contact the taxpayer once a determination has been made.

Proposed law provides an accepted application constitutes a joint closing agreement between the taxpayer and the DOR and LWC.

Proposed law provides that the closing agreement shall constitute confirmation by the taxpayer to treat the class or classes of workers identified in the application as employees.

Proposed law provides that the closing agreement becomes effective on the date that the taxpayer receives notice from the DOR that the taxpayer's application is accepted.

Proposed law does not allow taxpayers who are contesting the classification of workers in court or taxpayers under audit for worker classification by the IRS, U.S. Dept. of Labor, or a state agency to participate in the program.

Proposed law provides that a taxpayer is considered to be under audit for purposes of the Fresh Start Proper Worker Classification Initiative if a member of their affiliated group is under audit.

Proposed law does not allow taxpayers who have withheld state income taxes from their workers but who have not remitted the tax to DOR to participate in the program.

Proposed law creates the Louisiana Voluntary Disclosure Program (VDA Program) for the voluntary and anonymous reporting of undisclosed liabilities for withholding taxes administered by the DOR and unemployment taxes administered by LWC.

Proposed law requires employers to provide proof that the employees are covered by workers' compensation to participate in the VDA Program.

Proposed law provides that the DOR shall have the authority to promulgate rules and regulations for the administration of the Fresh Start Proper Worker Classification Initiative.

Proposed law requires the waiver of any delinquent penalty after all tax and interest due for the look-back period have been paid by the VDA Program applicant whose application has been accepted, unless the tax disclosed was collected but not remitted.

Proposed law provides a safe harbor from withholding taxes, or penalties for underpayment of any unemployment taxes for putative employers who have consistently and timely filed all required federal tax and information returns for their workers as independent contractors, always treated the particular classification of worker as an independent contractor, and had a reasonable basis for not treating the class of workers as an employee.

Proposed law provides that the safe harbor does not apply if the putative employer treated any similar worker as an employee.

Proposed law provides that the Act shall not apply to any person or organization licensed by the La. Dept. of Insurance, any securities broker-dealer, or any investment adviser or its agents and representatives registered with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the state of Louisiana.

Effective January 1, 2022.

(Adds R.S. 23:1771-1776)

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