

RÉSUMÉ DIGEST

ACT 297 (SB 244)

2021 Regular Session

Luneau

New law defines terms.

New 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).

New 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.

New 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.

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

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

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

New 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.

New 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.

New 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.

New 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.

New 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.

New 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.

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

New 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.

New 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.

New 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.

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

New 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.

Effective January 1, 2022.

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