

2022 Regular Session

ACT No. 406

HOUSE BILL NO. 1067 (Substitute for House Bill No. 241 by Representative Riser)

BY REPRESENTATIVE RISER

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AN ACT

To amend and reenact the heading of Part XIII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2), and R.S. 47:1508(B)(28), to enact R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4, and to repeal R.S. 23:1772, 1774, and 1776, relative to the Fresh Start Proper Worker Classification Initiative and the Voluntary Disclosure Program; to provide for definitions; to provide for eligibility requirements for participation in the Voluntary Disclosure Program; to provide for the payment of unemployment taxes and penalties; to provide for withholding taxes, interest, and penalties; to provide for compliance with federal laws and regulations; to provide for a safe harbor; to provide for unemployment interest; to provide for a public records exception; to require the Department of Revenue to promulgate rules and regulations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The heading of Part XIII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, R.S. 23:1771, 1773, and 1775(B) and (C)(2) are hereby amended and reenacted and R.S. 23:1775(F) is hereby enacted to read as follows:

~~PART XIII. FRESH START PROPER WORKER CLASSIFICATION INITIATIVE~~
~~AND~~ VOLUNTARY DISCLOSURE PROGRAM

§1771. Definitions

~~A.~~ For the purposes of this Part, the following terms have the meanings ascribed to them:

(1) "Applicant" means any association, corporation, estate, firm, individual, joint venture, limited liability company, partnership, receiver, syndicate, trust, or any

1 other entity, combination, or group that submits or arranges through a representative
2 for the submission of an application to request a voluntary disclosure agreement for
3 a tax administered by the ~~department~~ commission. ~~If the application is submitted~~
4 ~~through a representative, anonymity of the applicant can be maintained until the~~
5 ~~voluntary disclosure agreement is executed by the taxpayer and the secretary of the~~
6 ~~Louisiana Workforce Commission.~~

7 (2) "Application" means a completed application to request a voluntary
8 disclosure agreement and all supplemental information including but not limited to
9 cover letters, schedules, reports, and any other documents that provide evidence of
10 the applicant's qualification for a voluntary disclosure agreement. Supplemental
11 information requested by the ~~Department of Revenue and Louisiana Workforce~~
12 ~~Commission~~ commission and timely provided by the applicant shall be considered
13 part of the application.

14 (3) "Application date" means the date a fully completed application
15 requesting a voluntary disclosure agreement is received by the ~~department~~
16 commission. Supplemental information requested by the department and timely
17 provided by the applicant shall not extend or delay the application date.

18 (4) ~~"Delinquent penalty" means any specific penalty imposed as a result of~~
19 ~~the failure of the taxpayer to timely make any required return or payment~~
20 "Commission" means the Louisiana Workforce Commission.

21 (5) "Look-back period" means a period for which a qualified applicant
22 agrees to disclose and pay the tax and ~~interest~~ other amounts due. ~~The look-back~~
23 ~~period shall include the current calendar year up to the date of registration with the~~
24 ~~Department of Revenue and Louisiana Workforce Commission and the one~~
25 ~~immediately preceding calendar year. For discontinued, acquired, or merged entities,~~
26 ~~the look-back period shall include undisclosed liabilities in the last calendar year in~~
27 ~~which the qualified applicant had nexus within this state and the one immediately~~
28 ~~preceding calendar year~~ In accordance with the Federal Unemployment Tax Act
29 (FUTA), 26 U.S.C. 3303(a), the look-back period shall include the entire three-year
30 experience rating period for unemployment taxes for the commission.

1 (6) "Penalty" means any specific penalty imposed as a result of the failure
 2 of the taxpayer to correctly classify a worker or class of workers, if not otherwise
 3 specifically excluded.

4 (7) "Secretary" means the secretary of the Louisiana Workforce
 5 Commission.

6 §1773. Louisiana Voluntary Disclosure Program

7 A.(1) The Louisiana Voluntary Disclosure Program is established as a
 8 process of reporting undisclosed liabilities for ~~withholding taxes administered by the~~
 9 ~~Department of Revenue and~~ unemployment taxes administered by the Louisiana
 10 Workforce Commission that would have been due for workers who were not
 11 classified as employees. The Voluntary Disclosure Program authorizes taxpayers to
 12 ~~anonymously~~ confidentially enter into agreements and voluntarily pay
 13 unemployment taxes and penalties with no ~~penalty~~ interest.

14 (2) In order to be admitted to the program, an employer shall obtain and
 15 produce a certificate proving he has obtained workers' compensation coverage for
 16 his employees.

17 (3) The following employers shall not be eligible to participate in the
 18 program:

19 (a) Employers who are currently under audit concerning the classification
 20 of the classes of workers by the Internal Revenue Service, the United States
 21 Department of Labor, or a state government entity.

22 (b) Employers who are contesting in court or in an administrative proceeding
 23 the classification of the class or classes of workers from a previous audit by the
 24 Internal Revenue Service, the United States Department of Labor, the Louisiana
 25 Department of Revenue, or the Louisiana Workforce Commission.

26 (4) No worker who performs services that are statutorily excluded from the
 27 definition of covered employment provided for in R.S. 23:1472 shall be eligible for
 28 reclassification as an employee.

29 (5) The provisions of this Section shall not apply to either of the following:

1 (a) Any service performed in the employ of a state, and political subdivision
 2 of the state, or of an Indian tribe, or any instrumentality of the state, any political
 3 subdivision of the state, or any Indian tribe, which is wholly owned by one or more
 4 states, political subdivisions, or Indian tribes, but only if the service is excluded from
 5 employment as defined in the Federal Unemployment Tax Act.

6 (b) Any service performed by an individual in the employ of a religious,
 7 charitable, educational, or other organization, but only if the service is excluded from
 8 employment as defined in the Federal Unemployment Tax Act.

9 B. The Louisiana Workforce Commission, ~~in consultation with the~~
 10 ~~Department of Revenue~~ shall promulgate rules and regulations necessary for the
 11 administration of the Louisiana Voluntary Disclosure Program.

12 §1775. Voluntary Disclosure Agreements; unemployment tax

13 * * *

14 B. After all unemployment tax and ~~interest~~ penalties due for the look-back
 15 period have been paid, the ~~delinquent penalties~~ interest due as provided for in R.S.
 16 23:1543 shall be waived to the extent permitted by law. No penalties provided for
 17 in R.S. 23:1543 or penalties related to fraud or state unemployment tax act dumping
 18 provided for in R.S. 23:1539.1 shall be waived.

19 C.

20 * * *

21 (2) The administrator shall compute the ~~interest~~ tax and penalties due for the
 22 ~~tax~~ workers disclosed by the applicant and send a schedule by mail or email to the
 23 applicant or his representative showing the amount of tax and ~~interest~~ penalties due.
 24 The applicant shall submit payment of the full amount of the ~~interest~~ tax and
 25 penalties due within thirty calendar days from the postmark or email date of the
 26 schedule or, if applicable, within any extension of time granted by the administrator.
 27 If payment of the full amount due has not been received at the expiration of such
 28 time, the administrator may void the agreement.

29 * * *

1 F. Notwithstanding any other provisions of state or federal law to the
 2 contrary, waiver of unemployment interest shall not be available for the Voluntary
 3 Disclosure Program when the employer has engaged in, is under audit for, or has a
 4 case on appeal pertaining to willfully misclassifying workers under Title 23 of the
 5 Louisiana Revised Statutes of 1950 or when the employer is engaged in, under audit
 6 for, or has a case on appeal pertaining to state unemployment tax act dumping
 7 provided for in R.S. 23:1539.1. No waiver of penalties provided for in R.S. 23:1543
 8 shall be made for either program. Additionally, under 26 U.S.C. 3304 of the Federal
 9 Unemployment Tax Act, 42 U.S.C. 503, the state unemployment tax act Dumping
 10 Prevention Act of 2004, as required in R.S. 23:1664, and as per the United States
 11 Department of Labor's directive to the Louisiana Workforce Commission, employer
 12 liability for SUTA dumping penalties and fraud penalties shall not be waived under
 13 federal law under any circumstances.

14 Section 2. R.S. 47:1508(B)(28) is hereby amended and reenacted and R.S. 47:1576.3
 15 and 1576.4 are hereby enacted to read as follows:

16 §1508. Confidentiality of tax records

17 * * *

18 B. Nothing herein contained shall be construed to prevent:

19 * * *

20 (28) The sharing or furnishing, in the discretion of the secretary, of
 21 information to the Louisiana Workforce Commission for the purposes of
 22 determining, investigating, or prosecuting fraud related to all areas administered by
 23 the Louisiana Workforce Commission or for the purposes of reviewing and
 24 considering applications for participation in the Fresh Start Proper Worker
 25 Classification Initiative provided for in R.S. 47:1576.3. Any information shared or
 26 furnished shall be considered and held confidential and privileged by the Louisiana
 27 Workforce Commission to the same extent heretofore provided.

28 * * *

29 §1576.3. The Fresh Start Proper Worker Classification Initiative

30 A. For the purposes of this Section, the following terms have the meanings
 31 ascribed to them:

1 (1) "Applicant" means any association, corporation, estate, firm, individual,
2 joint venture, limited liability company, partnership, receiver, syndicate, trust, or any
3 other entity, combination, or group that submits or arranges through a representative
4 for the submission of an application to request relief under the Fresh Start Proper
5 Worker Classification Initiative for a tax administered by the department.

6 (2) "Application" means a completed application to request relief under the
7 Fresh Start Proper Worker Classification Initiative and all supplemental information
8 including but not limited to cover letters, schedules, reports, and any other
9 documents that provide evidence of the applicant's qualification for the Fresh Start
10 Proper Worker Classification Initiative. Supplemental information requested by the
11 department and timely provided by the applicant shall be considered part of the
12 application.

13 (3) "Application date" means the date a fully completed application
14 requesting relief under the Fresh Start Proper Worker Classification Initiative is
15 received by the department. Supplemental information requested by the department
16 and timely provided by the applicant shall not extend or delay the application date.

17 (4) "Class of workers" means a group of workers who perform the same or
18 similar services.

19 (5) "Commission" means the Louisiana Workforce Commission.

20 (6) "Department" means the Department of Revenue.

21 (7) "Secretary" means the secretary of the Department of Revenue.

22 B. The Fresh Start Proper Worker Classification Initiative is optional and
23 provides a taxpayer with an opportunity to voluntarily reclassify his worker as an
24 employee for a future tax period. To be eligible, a taxpayer shall meet all of the
25 following requirements:

26 (1) Apply to the Fresh Start Proper Worker Classification Initiative between
27 January 1, 2023, and December 31, 2023.

28 (2) Produce a certificate of proof of workers' compensation coverage for the
29 employee.

30 (3) Enter into a closing agreement with the department.

1 C. The Fresh Start Proper Worker Classification Initiative applies to
2 taxpayers that are currently treating their workers as independent contractors or other
3 nonemployees and want to prospectively treat the workers as employees. To be
4 eligible, a taxpayer shall have consistently treated the workers for the previous three
5 years as nonemployees, and shall have filed any required Form 1099-MISC, Form
6 1099-NEC, or equivalent form with the Internal Revenue Service with respect to
7 those workers, consistent with the nonemployee treatment.

8 D.(1) An eligible taxpayer that participates in the Fresh Start Proper Worker
9 Classification Initiative agrees to prospectively treat the class or classes of workers
10 identified in the application as employees for future tax periods and is not liable for
11 any withholding tax or related interest and penalties with respect to any amounts paid
12 to any workers before the date on which the taxpayer is accepted for participation in
13 the Fresh Start Proper Worker Classification Initiative.

14 (2) An eligible taxpayer shall not be entitled to any relief from unemployment
15 tax, interest, or penalties pursuant to this Section, but may seek relief in accordance
16 with R.S. 23:1775.

17 (3) An eligible taxpayer may request that the commission develop with the
18 taxpayer a reasonable payment schedule for unemployment taxes owed for the look-
19 back period as defined in R.S. 23:1771. However, payment of all outstanding
20 unemployment liabilities shall not be required prior to acceptance of the taxpayer's
21 application.

22 E.(1) An eligible taxpayer that wishes to participate in the Fresh Start Proper
23 Worker Classification Initiative shall submit an application for participation in the
24 program to the department on a form prescribed by the secretary. The department
25 shall contact the taxpayer or authorized representative to complete the application
26 process once it has reviewed the application and verified the taxpayer's eligibility.

27 (2) An accepted application constitutes a joint closing agreement between
28 the taxpayer and the department.

29 (3)(a) The closing agreement shall constitute confirmation by the taxpayer
30 to treat the class or classes of workers identified in the application as employees and

1 to comply with any and all reporting and payment obligations related to withholding
2 tax, unemployment tax, and workers' compensation coverage for the period
3 subsequent to the effective date of the agreement.

4 (b) Notwithstanding any provision of law to the contrary, any reclassification
5 of a class or classes of workers performing the following services shall be limited to
6 withholding tax and shall not be eligible for reclassification as an employee for
7 purposes of unemployment tax:

8 (i) Any services that are statutorily excluded from the definition of
9 employment provided for in R.S. 23:1472.

10 (ii) Any service performed in the employ of a state, and political subdivision
11 of the state, or of an Indian tribe, or any instrumentality of the state, any political
12 subdivision of the state, or any Indian tribe, which is wholly owned by one or more
13 states, political subdivisions, or Indian tribes, but only if the service is excluded from
14 employment as defined in the Federal Unemployment Tax Act.

15 (iii) Any service performed by an individual in the employ of a religious,
16 charitable, educational, or other organization, but only if the service is excluded from
17 employment as defined in the Federal Unemployment Tax Act.

18 (4) The closing agreement shall become effective on the date that the
19 taxpayer receives notice from the department that the taxpayer's application is
20 accepted.

21 (5) Failure to comply with the terms of the closing agreement and this
22 Section may nullify the acceptance of the taxpayer's application. If an acceptance
23 is nullified, the taxpayer shall become liable for withholding tax, interest, and
24 penalties determined to be due for prior periods.

25 (6) The secretary may disclose any information provided in an application
26 or in support of an application to the commission in order to coordinate the review
27 and consideration of the application. Any information furnished shall be considered
28 confidential and privileged and held by the commission as provided for in R.S.
29 47:1508.

1 F. The following employers shall not be eligible to participate in the
 2 program:

3 (1)(a) Employers that are currently under audit concerning the classification
 4 of the classes of workers by the Internal Revenue Service, the United States
 5 Department of Labor, or by a state government entity.

6 (b) Employers who are contesting in court the classification of the class or
 7 classes of workers from a previous audit by the Internal Revenue Service, the United
 8 States Department of Labor, the department, or the commission.

9 (c) Employers who have withheld state income taxes from the amounts paid
 10 to any worker and who have not remitted the tax to the department.

11 (2) For the purposes of Subparagraphs (a) and (b) of this Paragraph, a
 12 taxpayer that is a member of an affiliated group within the meaning of Section
 13 1504(a) of the Internal Revenue Code shall be ineligible if any member of the
 14 affiliated group is under an employment, withholding, or unemployment tax audit.

15 G. A finding that a taxpayer failed to provide information or documentation
 16 to reveal a fact material to an eligibility determination or made a material
 17 misrepresentation as to any eligibility requirement shall immediately nullify the
 18 acceptance of the taxpayer's application.

19 H. The department shall have the authority to promulgate rules and
 20 regulations for the administration of the Fresh Start Proper Worker Classification
 21 Initiative. Additionally, the department shall promulgate rules and regulations no
 22 later than July 1, 2023, establishing a voluntary disclosure program for reporting
 23 undisclosed liabilities for withholding taxes that would have been due for workers
 24 who were not classified as employees.

25 §1576.4. Safe harbor

26 Any putative employer meeting the requirements provided for in this Section
 27 shall not owe withholding tax, interest, or penalties otherwise due for the workers to
 28 whom these requirements apply:

29 (1) Reporting consistency. The putative employer timely filed all required
 30 federal tax and information returns for independent contractors who were paid six

1 hundred dollars or more, such as Form 1099-MISC or Form 1099-NEC. Relief is not
2 available for any worker for whom the employer did not file the required information
3 return.

4 (2) Substantive consistency. The putative employer and any predecessor
5 always treated the worker as an independent contractor; however, if any similar
6 worker was treated as an employee, relief is not available.

7 (3)(a) Reasonable basis. The putative employer had a reasonable basis for
8 not treating the worker as an employee including any of the following:

9 (i) The putative employer relied on a court case or Internal Revenue Service
10 ruling.

11 (ii) The putative employer was previously audited and the Internal Revenue
12 Service considered employment taxes but did not reclassify the workers.

13 (iii) Independent contractor treatment is common in the putative employer's
14 industry for workers providing similar services.

15 (iv) The putative employer and any predecessor always treated the worker
16 as an independent contractor.

17 (v) The putative employer relied on legal advice or advice of an accountant.

18 (b) Notwithstanding any contrary provision of this Paragraph, if any similar
19 worker was treated as an employee, relief is not available.

20 Section 3. R.S. 23:1772, 1774, and 1776 are hereby repealed in their entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____