

RÉSUMÉ DIGEST

ACT 406 (HB 1067)

2022 Regular Session

Riser

New law makes modifications to the Fresh Start Proper Worker Classification Initiative and the Voluntary Disclosure Program.

VOLUNTARY DISCLOSURE PROGRAM

Existing law provides definitions for applicant, application, application date, and look-back period.

New law deletes the definition for delinquent penalty and adds definitions for commission, penalty, and secretary.

Prior law provided that the Louisiana Voluntary Disclosure Program (the program) is established as a process of reporting undisclosed liabilities for withholding taxes administered by the La. Dept. of Revenue and unemployment taxes by the La. Workforce Commission (LWC) that would have been due for workers who were not classified as employees.

New law deletes provisions relative to the reporting undisclosed liabilities for withholding taxes administered by the La. Dept. of Revenue.

Prior law provided that the program authorizes taxpayers to anonymously enter into agreements and voluntarily pay taxes with no penalty.

New law instead provides that the program authorizes taxpayers to confidentially enter into agreements and voluntarily pay unemployment taxes with no interest and without certain penalties.

New law provides that the following employers shall not be eligible to participate in the program:

- (1) Employers who are currently under audit concerning the classification of the classes of workers by the Internal Revenue Service (IRS), the U.S. Dept. of Labor, or by a state government entity.
- (2) Employers who are contesting in court or in an administrative proceeding the classification of the class or classes of workers from a previous audit by the IRS, the U.S. Dept. of Labor, or the La. Dept. of Revenue, or LWC.

New law provides that no worker that performs services that are statutorily excluded from the definition of covered employment provided for in existing law (R.S. 23:1472) shall be eligible for reclassification as an employee.

New law shall not apply to any of the following:

- (1) Any service performed in the employ of a state, and political subdivision of the state, or of an Indian tribe, or any instrumentality of the state, any political subdivision of the state, or any Indian tribe, which is wholly owned by one or more states, political subdivisions, or Indian tribes, but only if the service is excluded from employment as defined in federal law.
- (2) Any service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from employment as defined in federal law.

Prior law provided that after all unemployment tax and interest due for the look-back period have been paid, the delinquent penalties shall be waived.

New law instead provides that after all unemployment tax and penalties due for the look-back period have been paid, interest due provided for in existing law (R.S. 23:1543) shall be

waived to the extent permitted by law. New law further provides that no penalties provided for in existing law (R.S. 23:1539.1) or penalties related to fraud shall be waived.

New law provides that waiver of unemployment interest shall not be available for the program when the employer has engaged in, is under audit for, or has a case on appeal pertaining to willfully misclassifying workers or when the employer is engaged in, under audit for, or has a case on appeal pertaining to State Unemployment Tax Act (SUTA) dumping provided for in existing law (R.S. 23:1539.1).

New law provides that employer liability for SUTA dumping penalties and fraud penalties shall not be waived under federal law under any circumstances.

FRESH START PROPER WORKER CLASSIFICATION INITIATIVE

Existing law provides that the secretary of the La. Dept. of Revenue may, at his discretion, share or furnish information to LWC for the purposes of determining, investigating, or prosecuting fraud related to all areas in LWC's purview. Existing law further provides that any information shared or furnished is considered and held confidential and privileged.

New law extends the disclosure of information to LWC to also include information that involves the reviewing and consideration of applications for participation in the Fresh Start Proper Worker Classification Initiative. New law otherwise retains existing law.

New law provides definitions for applicant, application, application date, class of workers, commission, department, and secretary.

New law provides that the Fresh Start Proper Worker Classification Initiative (the initiative) is optional and provides a taxpayer with an opportunity to voluntarily reclassify a worker as an employee for a future tax period. New law further 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, 2023, and Dec. 31, 2023.
- (2) Produce a certificate of proof of workers' compensation coverage for the employee.
- (3) Enter into a closing agreement with the La. Dept. of Revenue.

New law provides that an eligible taxpayer that participates in the initiative agrees to prospectively treat the class of classes of workers identified in the application as employees for future tax periods and is not liable for any withholding tax or related interest and penalties with respect to any amounts paid to any workers before the date on which the taxpayer is accepted for participation in the initiative.

New law provides that an eligible taxpayer shall not be entitled to any relief from unemployment tax, interest, or penalties, but may seek relief in accordance with existing law (R.S. 23:1775).

New law provides that an eligible taxpayer may request that the LWC develop with the taxpayer a reasonable payment schedule for unemployment taxes owed for the look-back period. New law further provides that payment of all outstanding unemployment liabilities shall not be required prior to acceptance of the taxpayer's application.

New law provides that an eligible taxpayer that wishes to participate in the initiative shall submit an application for participation in the program to the department on a form prescribed by the secretary of the La. Dept. of Revenue.

New law further provides that La. Dept. of Revenue shall contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility.

New law provides that an accepted application constitutes a joint closing agreement between the taxpayer and the La. Dept. of Revenue.

New law provides that the closing agreement shall become effective on the date that the taxpayer receives notice from the La. Dept. of Revenue that the taxpayer's application is accepted.

New law provides that failure to comply with the terms of the closing agreement and new law may nullify the acceptance of the taxpayer's application. New law further provides that if an acceptance is nullified, the taxpayer shall become liable for withholding tax, interest, and penalties determined to be due for prior periods.

New law provides that the following employers shall not be eligible to participate in the program:

- (1) Employers who are currently under audit concerning the classification of the classes of workers by the IRS, the U.S. Dept. of Labor, or by a state government entity.
- (2) Employers who are contesting in court the classification of the class or classes of workers from a previous audit by the IRS, the U.S. Dept. of Labor, the La. Dept. of Revenue, or LWC.
- (3) Employers who have withheld state income taxes from the amounts paid to any worker and who have not remitted the tax to the La. Dept. of Revenue.
- (4) A taxpayer that is a member of an affiliated group defined under federal law shall be ineligible if any member of the affiliated group is under an employment, withholding, or unemployment tax audit.

New law grants the La. Dept. of Revenue the authority to promulgate rules and regulations for the administration of the initiative.

New law requires the La. Dept. of Revenue to promulgate rules and regulations establishing a voluntary disclosure program for reporting undisclosed liabilities for withholding taxes no later than July 1, 2023.

New law also provides for a safe harbor provision that exempts any putative employer, who meets the specified requirements provided for in new law from withholding tax, interest, or penalties.

Effective August 1, 2022.

(Amends the heading of Part XIII of Chapter 11 of Title 23 of the La. Revised Statutes of 1950, R.S. 23:1771, 1773, 1775(B) and (C)(2), and R.S. 47:1508(B)(28); Adds R.S. 23:1775(F) and R.S. 47:1576.3 and 1576.4; Repeals R.S. 23:1772, 1774, and 1776)