

2020 Regular Session

HOUSE BILL NO. 397

BY REPRESENTATIVE LANDRY

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

9 §1711. False statements or representations; failure to file reports or maintain
10 records; duties of officers and agents; presumptive proof; penalties

11 * * *

12 G. Misclassification of employees as independent contractors.

13 (1)(a) ~~Written warning.~~ Administrative penalties.

14 (a) If the administrator determines, after an initial investigation, that an
15 employer; or any officer, agent, superintendent, foreman, or employee of the
16 employer, failed to properly classify an individual as an employee in accordance
17 with this Chapter, and failed to pay contributions required by this Chapter and the
18 failure was knowing or willful, ~~but the failure was not knowing or willful~~, the
19 ~~employer shall be issued a written warning as evidence that the employer has been~~
20 ~~cited for a first offense of misclassification.~~ Such warning shall constitute a

1 ~~determination that any workers identified therein are employees, and all resulting~~
2 ~~contributions, interest and penalties shall be due, and shall be appealable as provided~~
3 ~~in this Section. However, no administrative penalties shall be due. then, in addition~~
4 ~~to any contributions, interest, and penalties otherwise due, the administrator may~~
5 ~~assess an administrative penalty of not more than five thousand dollars.~~

6 (b) ~~Administrative penalties.~~ If the administrator determines, after the second
7 investigation, that an employer, or any officer, agent, superintendent, foreman, or
8 employee of the employer, ~~after June 30, 2013, and subsequent to the issuance of a~~
9 ~~written warning,~~ failed to properly classify an individual as an employee and failed
10 to pay contributions in accordance with this Chapter, then, in addition to any
11 contributions, interest, and penalties otherwise due, the administrator may assess an
12 administrative penalty of not more than ~~two hundred fifty dollars~~ ten thousand
13 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 twenty-five thousand dollars per each such individual. In determining the amount of
18 the administrative penalty imposed, the administrator shall consider factors including
19 previous violations by the employer, the seriousness of the violation, the good faith
20 of the employer, and the size of the employer's business.

21 ~~(e)(d) If, (i) If~~ after an employer ~~has been issued a written warning and is~~
22 ~~subsequently found; on two or more separate occasions, to have failed to properly~~
23 ~~classify an individual as an employee; the employer may also be subject to an~~
24 ~~additional fine of not less than one hundred dollars nor more than one thousand~~
25 ~~dollars~~ fifty thousand dollars, or imprisoned for not less than thirty days nor more
26 than ninety days, or both. For the purpose of this Subsection, each employee so
27 misclassified shall constitute a separate offense.

28 (ii) In addition to any penalty imposed pursuant to the provisions of
29 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 397 Original

2020 Regular Session

Landry

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

Present law 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.

Proposed law deletes present law 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.

Present law 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.

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

Present law 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.

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

Present law 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. Proposed law retains present law.

Present law 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.

Proposed law 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.

Proposed law changes the penalty for a subsequent offense from a fine between \$100 and \$1,000 or imprisonment between 30 and 90 days or both to 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))