

2021 Regular Session

HOUSE BILL NO. 705 (Substitute for House Bill No. 151 by Representative Riser)

BY REPRESENTATIVE RISER AND SENATORS ALLAIN, BARROW, BOUDREAUX,
BOUIE, CONNICK, FIELDS, HEWITT, JACKSON, LUNEAU, PRICE, SMITH,
TARVER, AND WARD

1 AN ACT

2 To amend and reenact R.S. 23:1711(G)(1) and to enact R.S. 23:1711.1, relative to
3 unemployment compensation; to provide for the classification of employees; to
4 increase the administrative penalties for the misclassification of employees; to
5 provide relative to the failure to pay contributions; to provide criteria for classifying
6 employees as independent contractors; to provide for applicability; and to provide
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1711(G)(1) is hereby amended and reenacted and R.S. 23:1711.1
10 is hereby enacted to read as follows:

11 §1711. False statements or representations; failure to file reports or maintain
12 records; duties of officers and agents; presumptive proof; penalties

13 * * *

14 G. Misclassification of employees as independent contractors.

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

1 Such warning shall constitute a determination that any workers identified therein are
2 employees, and all resulting contributions, interest and penalties shall be due, and
3 shall be appealable as provided in this Section. However, no administrative penalties
4 shall be due.

5 **(b)** Administrative penalties. If the administrator determines, after
6 investigation, that an employer, or any officer, agent, superintendent, foreman, or
7 employee of the employer, ~~after June 30, 2013, and subsequent to the issuance of a~~
8 ~~written warning,~~ failed to properly classify an individual as an employee and failed
9 to pay contributions in accordance with this Chapter, then, in addition to any
10 contributions, interest, and penalties otherwise due, the administrator may assess an
11 administrative penalty of ~~not more than two hundred fifty~~ five hundred dollars per
12 each such individual. If the employer becomes compliant within sixty days of the
13 citation, the penalty shall be waived for the first offense.

14 (b) After the first offense, the administrator shall assess an administrative
15 penalty of one thousand dollars per individual misclassified.

16 **(c)** Thereafter, any such failure by an employer to properly classify an
17 individual as an employee and pay contributions due shall be subject to an
18 administrative penalty of ~~not more than five hundred~~ two thousand five hundred
19 dollars per each such individual. ~~In determining the amount of the administrative~~
20 ~~penalty imposed, the administrator shall consider factors including previous~~
21 ~~violations by the employer, the seriousness of the violation, the good faith of the~~
22 ~~employer, and the size of the employer's business.~~

23 ~~(c) If, after an employer has been issued a written warning and is~~
24 ~~subsequently found, on two or more separate occasions, to have failed to properly~~
25 ~~classify an individual as an employee, the employer may also be subject to an~~
26 ~~additional fine of not less than one hundred dollars nor more than one thousand~~
27 ~~dollars, or imprisoned for not less than thirty days nor more than ninety days, or~~

1 ~~both. For the purpose of this Subsection, each employee so misclassified shall~~
2 ~~constitute a separate offense.~~

3 (d) No such determination shall be final or effective, and no resulting
4 administrative penalty shall be assessed, unless the administrator first provides the
5 employer with written notification by certified mail of the determination, including
6 the amount of the proposed contributions, interest, and penalties determined to be
7 due and of the opportunity to request a fair hearing, of which a record shall be made
8 within thirty days of the mailing of such notice. The hearing request may be made
9 by mail, as evidenced by the official postmarked date, or by otherwise timely
10 delivering such appeal. If the employer does not request a hearing within the thirty-
11 day period the determination shall become final and effective, and the contributions,
12 interest, and penalties due shall be assessed.

13 (e) All administrative penalties assessed pursuant to this Section shall be
14 deposited into the state's unemployment trust fund.

15 * * *

16 §1711.1. Independent contractor; rebuttable presumption

17 A.(1) Notwithstanding any provision of this Chapter to the contrary, there
18 shall be a rebuttable presumption of an independent contractor relationship with the
19 contracting party for whom the independent contractor performs work, if an
20 individual or entity controls the performance, methods, or processes used to perform
21 services and meets at least six of the following criteria:

22 (a) The individual or entity operates an independent business that provides
23 services for or in connection with the contracting party.

24 (b) The individual or entity represents the provided services as self-
25 employment available to others, including through the use of a platform application
26 to obtain work opportunities or as a lead generation service.

27 (c) The individual or entity accepts responsibility for all tax liability
28 associated with payments received from or through the contracting party.

1 (d) The individual or entity is responsible for obtaining and maintaining any
2 required registration, licenses, or other authorization necessary for the legal
3 performance of the services rendered by him as the contractor.

4 (e) The individual or entity is not insured under the contracting party's health
5 insurance or workers' compensation insurance coverage and is not covered for
6 unemployment insurance benefits.

7 (f) The individual or entity has the right to accept or decline requests for
8 services by or through the contracting party and is able to perform services for or
9 through other parties or can accept work from and perform work for other businesses
10 and individuals besides the contracting party even if the individual voluntarily
11 chooses not to exercise this right or is temporarily restricted from doing so.

12 (g) The contracting party has the right to impose quality standards or a
13 deadline for completion of services performed, or both, but the individual or entity
14 determines the days worked and the time periods of work.

15 (h) The individual or entity furnishes the major tools or items of equipment
16 needed to perform the work.

17 (i) The individual or entity is paid a fixed or contract rate for the work
18 performed and the contracting party does not pay the individual or entity a salary or
19 wages based on an hourly rate.

20 (j) The individual or entity is responsible for the majority of expenses
21 incurred in performing the services, unless the expenses are reimbursed under an
22 express provision of a written contract between the parties or the expenses
23 reimbursed are commonly reimbursed under industry practice.

24 (k) The individual or entity can use assistants as deemed proper for the
25 performance of the work and is directly responsible for supervision and
26 compensation.

27 (2) Any contracting party or independent contractor may rely on the
28 provisions of this Section for the purpose of establishing an employment or
29 independent contractor relationship.

1 B. The provisions of this Section shall not apply to any of the following:

2 (1) A motor carrier who pursuant to a contract with an owner operator as
 3 defined in R.S. 23:1021(10) undertakes the performance of services as a motor
 4 carrier.

5 (2) Any service excluded from the term "employment" as provided in R.S.
 6 23:1472(12)(H).

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

12 (4) Any service performed by an individual in the employ of a religious,
 13 charitable, educational, or other organization, but only if the service is excluded from
 14 employment as defined in the Federal Unemployment Act.

15 Section 2. The legislature finds and declares the following:

16 (A) It is in the best interests of workers, businesses, and government entities to have
 17 clear and certain criteria in identifying an independent contractor relationship as compared
 18 to an employment relationship.

19 (B) These criteria will reduce unnecessary and costly litigation, as well as confusion
 20 in the workforce industry, amongst agencies, and within the court systems.

21 (C) To this end, this Act is to ensure that employees will be properly classified as
 22 such and afforded the legal protections and obligations that apply to that status while
 23 workers who desire to be independent contractors know the criteria for that designation.

24 Section 3. The provisions of this Act shall not apply to any person or organization
 25 licensed by the Department of Insurance, any securities broker-dealer, or any investment
 26 adviser or their agents and representatives who are registered with the Securities and
 27 Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the state
 28 of Louisiana.

1 Section 4. This Act shall be known and may be cited as "The Ernest C. Stephens
2 Act".

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____