

## RÉSUMÉ DIGEST

ACT 455 (HB 705)

2021 Regular Session

Riser

Relative to unemployment compensation, prior law provided that if, after an investigation, the administrator determined that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, failed to properly classify an individual as an employee and failed to pay contributions and that failure was not knowingly or willfully, the employer would have been issued a written warning. Prior law further provided that the written warning would have constituted as evidence that the employer had been cited for a first offense for misclassification.

New law repeals prior law.

Prior law provided that the administrator could assess an administrative penalty of not more than \$250 per each employer who had misclassified an employee and failed to pay contributions.

New law changes the administrative penalty amount from \$250 to \$500, but waives this penalty if the employer becomes compliant within 60 days of the citation for the first offense.

New law provides that after the first offense, the administrator shall assess an administrative penalty of \$1,000 per each individual who is misclassified.

Prior law provided that an employer who failed to properly classify an individual as an employee and pay contributions, would be subject to an administrative penalty of not more than \$500.

New law changes the administrative penalty amount from \$500 to \$2,500.

Prior law provided that, when determining the amount of the administrative penalty to impose, the administrator could have considered:

- (1) The previous violations by the employer.
- (2) The seriousness of the violation.
- (3) The good faith of the employer.
- (4) The size of the employer's business.

New law repeals prior law.

Prior law provided that after an employer was issued a written warning and was subsequently found on two or more separate occasions to have misclassified an employee, the employer could have been subjected to an additional fine of not less than \$100 nor more than \$1,000, or could have been imprisoned for not less than 30 days nor more than 90 days, or both.

New law repeals prior law.

New law provides that one-half of any administrative penalty assessed pursuant to new law shall be deposited into the state's unemployment trust fund.

New law provides that if an individual or entity meets at least six of 11 criteria listed in new law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work if an individual or entity controls the performance, methods, or processes used to perform services and meets those certain criteria.

New law provides that any contracting party or independent contractor may rely on the provisions of new law to establish an employment or independent contractor relationship.

New law provides that new law shall not apply to any motor carrier who pursuant to a contract with an owner operator as defined in existing law undertakes the performance of services as a motor carrier.

New law provides that new law shall not apply to any service excluded from the term employment as provided in existing law.

New law provides that new law shall not apply to any service performed in the employ of a state, any political subdivision of the state, or of an Indian tribe if the service is excluded from employment as defined in the Federal Unemployment Tax Act.

New law provides that new law shall not apply to 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 the Federal Unemployment Tax Act.

New law provides that the provisions of new law shall not apply to any person or organization licensed by the Dept. of Insurance, any securities broker-dealer, or any investment adviser or their agents and representatives who are registered with the Securities and Exchange Commission, or the Financial Industry Regulatory Authority or licensed by the state.

New law provides that new law shall be known and may be cited as "The Ernest C. Stephens Act".

Effective August 1, 2021.

(Amends R.S. 23:1711(G)(1); Adds R.S. 23:1711.1)