

SENATE BILL No. 1237

November 29, 2018, Introduced by Senator KOWALL and referred to the Committee on Commerce.

A bill to establish uniform criteria for determining an employee-employer relationship for purposes of the laws of this state; and to prohibit misclassification of employees in reports required of employers by this state.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee classification act".

3 Sec. 5. As used in this act:

4 (a) "Independent contractor" means an individual who provides
5 services to a principal and to whom both of the following
6 conditions apply:

7 (i) One or more of the following apply:

8 (A) The individual enters into a written agreement with the
9 principal that states the principal's intent to retain the services

1 of the individual as an independent contractor and includes
2 acknowledgments that the individual understands all of the
3 following:

4 (I) The individual will provide services for the principal as
5 an independent contractor.

6 (II) The individual is not an employee of the principal.

7 (III) The individual is not, as a result of the services
8 performed under the written agreement, entitled to worker's
9 compensation benefits under the worker's disability compensation
10 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, or unemployment
11 compensation benefits under the Michigan employment security act,
12 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

13 (IV) The individual is obligated to pay all applicable federal
14 and state income taxes on money earned for the services performed
15 under the written agreement, and the principal will not make any
16 tax withholdings from any payments from the principal.

17 (V) The individual is responsible for at least the majority of
18 supplies and other variable expenses that the individual incurs in
19 connection with performing the services under the written
20 agreement. Supplies and other variable expenses do not include any
21 of the following:

22 (1) Expenses that are for travel that is not local.

23 (2) Expenses that are reimbursed under an express provision of
24 the written agreement.

25 (3) Supplies and expenses that are reimbursed under common
26 industry practice.

27 (VI) The individual is responsible to maintain and bear the

1 costs of any required business licenses, insurance, certifications,
2 or permits required to perform the services under the agreement.

3 (B) The individual has filed, intends to file, or is
4 contractually required to file, in regard to the income earned from
5 the services performed for the principal, an income tax return with
6 the United States Internal Revenue Service for a business or for
7 earnings from self-employment.

8 (C) The individual provides the services under the written
9 agreement through a business entity, including, but not limited to,
10 a partnership, limited liability company or corporation, or a sole
11 proprietorship registered with a DBA as required under state or
12 local law.

13 (ii) Four or more of the following apply:

14 (A) The individual has the right to control the manner and
15 means by which the work is to be accomplished. The following do not
16 prevent the applicability of this sub-subparagraph:

17 (I) The individual does not have control over the final result
18 of the work.

19 (II) The principal provides orientation, information,
20 guidance, or suggestions about the principal's products, business,
21 training otherwise required by law, services, customers, or
22 operating systems.

23 (III) The principal exercises control necessary to ensure
24 compliance with statutory, regulatory, licensing, permitting, or
25 contractual obligations, to protect persons or property, or to
26 protect a franchise brand.

27 (B) Except for an agreement with the principal relating to

1 final completion or final delivery time or schedule, range of work
2 hours, or, if the work contracted for is entertainment, the time
3 the entertainment is to be presented, the individual has control
4 over the amount of time personally spent providing services.

5 (C) Except for services that can only be performed at a
6 specific location, the individual has control over where the
7 services are performed.

8 (D) The individual is not required to work exclusively for 1
9 principal unless 1 or both of the following apply:

10 (I) A law or regulation prohibits the person from providing
11 services to more than 1 principal.

12 (II) A license or permit that the individual is required to
13 maintain to perform the work limits the person to working for only
14 1 principal at a time or requires identification of the principal.

15 (E) The individual has the right to exercise independent
16 initiative in soliciting others to purchase his or her services.

17 (F) The individual has the right to hire employees or contract
18 with another person to perform all or some of the work.

19 (G) The individual's agreement to perform services for the
20 principal states that the individual cannot be required to perform
21 additional services without a new or modified agreement.

22 (H) The individual obtains a license or other permission from
23 the principal to utilize any workspace of the principal to perform
24 the work.

25 (I) The principal has been subject to an employment audit by
26 the United States Internal Revenue Service and the United States
27 Internal Revenue Service has not reclassified the individual to be

1 an employee or has not reclassified the category of workers to be
2 employees.

3 (b) "Misclassify" means to classify an individual who performs
4 services in employment in an employer-employee relationship with an
5 employer as an independent contractor.

6 Sec. 10. An employer or an agent of an employer shall not
7 misclassify an employee in a report required under the laws of this
8 state.

9 Enacting section 1. This act takes effect 90 days after the
10 date it is enacted into law.