

2020 Regular Session

SENATE BILL NO. 201

BY SENATOR CARTER

UNEMPLOYMENT COMP. Provides for an increase in the administrative penalties assessed for the misclassification of employees. (2/3 - CA10s18)(8/1/20)

1 AN ACT

2 To amend and reenact R.S. 23:1711(G)(1), relative to unemployment compensation; to
3 provide for the proper classification of employees; to remove the administrative
4 procedure requiring a written warning to be issued to the employer; to provide
5 relative to an increase in administrative penalties for the misclassification of
6 employees; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

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**

1 ~~failure was knowing or willful, but the failure was not knowing or willful, the~~
2 ~~employer shall be issued a written warning as evidence that the employer has been~~
3 ~~cited for a first offense of misclassification. Such warning shall constitute a~~
4 ~~determination that any workers identified therein are employees, and all resulting~~
5 ~~contributions, interest and penalties shall be due, and shall be appealable as provided~~
6 ~~in this Section. However, no administrative penalties shall be due. then in addition~~
7 ~~to any contributions, interest, and penalties otherwise due, the administrator~~
8 ~~may assess an administrative penalty of not more than five thousand dollars.~~

9 (b) ~~Administrative penalties.~~ If the administrator determines, after the second
10 investigation, that an employer, or any officer, agent, superintendent, foreman, or
11 employee of the employer, ~~after June 30, 2013, and subsequent to the issuance of a~~
12 ~~written warning,~~ failed to properly classify an individual as an employee and failed
13 to pay contributions in accordance with this Chapter, then, in addition to any
14 contributions, interest, and penalties otherwise due, the administrator may assess an
15 administrative penalty of not more than ~~two hundred fifty dollars~~ ten thousand
16 dollars per each such individual. Thereafter, any such failure by an employer to
17 properly classify an individual as an employee and pay contributions due shall be
18 subject to an administrative penalty of not more than ~~five hundred dollars~~
19 twenty-five thousand dollars per each such individual. In determining the amount
20 of the administrative penalty imposed, the administrator shall consider factors
21 including previous violations by the employer, the seriousness of the violation, the
22 good faith of the 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~~ fifty thousand dollars, or imprisoned for not ~~less than thirty days nor more~~
28 ~~than ninety days, or both. For the purpose of this Subsection, each employee so~~
29 ~~misclassified shall constitute a separate offense.~~

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

11 * * *

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Yoursheka George.

DIGEST

SB 201 Original 2020 Regular Session Carter

Present law, relative to unemployment compensation, provides that a warning letter must be issued as a first offense violation to an employer who knowingly and willfully fails to properly classify an individual as an employee.

Proposed law removes the requirement that a warning letter be issued to an employer as a first offense violation when the employer knowingly and willfully fails to properly classify an individual as an employee.

Present law provides that no administrative penalties are due for first offense violations.

Proposed law provides that at the determination of a first offense violation, in addition to any contributions, interest, and penalties otherwise due, an administrator may assess a penalty of up to \$5,000 to an employer who knowingly and willfully fails to properly classify an individual as an employee.

Present law provides that after June 30, 2013, an employer who has received written warning yet still fails to properly classify an individual as an employee may be assessed an administrative penalty of not more than \$250 per each such individual.

Present law provides that after June 30, 2013, an employer who has received written warning yet still fails to properly classify an individual as an employee and fails to pay his contributions after a determination of a third or subsequent violation, the employer may be assessed an administrative penalty of not more than \$500 per each such individual.

Proposed law provides that at the determination of a second or subsequent offense violation of an employer's failure to properly classify an individual as an employee, in addition to any contributions, interest, and penalties otherwise due, an administrator may assess a penalty of up to \$25,000 per such individual, or the employer may be subject to an additional fine of not less than \$50,000 or imprisonment for not more than 90 days, or both when an

employer knowingly and willfully fails to properly classify an individual as an employee.

Effective August 1, 2020.

(Amends R.S. 23:1711(G)(1))