

House File 2371 - Introduced

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BY B. MEYER

A BILL FOR

1 An Act prohibiting the misclassification of employees as
2 independent contractors, providing penalties, and including
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 95.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Department*" means the department of workforce
5 development.

6 2. "*Employee*" means an individual who performs services in
7 this state for an employer in return for remuneration and who
8 is considered an employee under regulations or guidelines of
9 the federal internal revenue service in effect as of the date
10 of an alleged misclassification.

11 3. "*Employer*" means a person who employs an individual in
12 this state for wages.

13 4. "*Independent contractor*" means an individual who
14 performs services in this state for an employer in return for
15 remuneration and who is considered an independent contractor
16 under regulations or guidelines of the federal internal
17 revenue service in effect as of the date of an alleged
18 misclassification.

19 5. "*Misclassify*" or "*misclassification*" means to classify an
20 individual for employment purposes as an independent contractor
21 rather than an employee, contrary to regulations or guidelines
22 of the federal internal revenue service in effect as of the
23 date of an alleged misclassification, with the effect of
24 denying the individual eligibility for an employment benefit
25 provided by law or for a government program.

26 Sec. 2. NEW SECTION. 95.2 Misclassification of employees
27 prohibited.

28 An employer shall not willfully misclassify an individual.

29 Sec. 3. NEW SECTION. 95.3 Civil penalty — procedures.

30 1. An employer who violates section 95.2 shall be subject
31 to a civil penalty of up to five thousand dollars per
32 misclassified individual for a first offense, up to seven
33 thousand five hundred dollars per misclassified individual
34 for a second offense, and up to ten thousand dollars per
35 misclassified individual for each subsequent offense.

1 2. The department shall provide written notice to an
2 employer prior to imposition of a civil penalty under this
3 section. An employer may contest and seek judicial review of a
4 determination of the department under this chapter pursuant to
5 chapter 17A; however, for purposes of this section, an employer
6 shall bear the burden to demonstrate by a preponderance of the
7 evidence that the employer did not violate section 95.2.

8 3. Upon a final determination of the department that an
9 employer violated section 95.2 and the conclusion of the period
10 for any appeals, all of the following apply:

11 a. The department shall bring an action in district court to
12 collect the penalties provided in this section. The department
13 shall remit any penalties collected to the treasurer of state
14 for deposit in the general fund.

15 b. The department shall refer the violation to a county
16 attorney. A county attorney shall not be bound by any
17 determination of the department.

18 Sec. 4. NEW SECTION. 95.4 Criminal penalty.

19 In addition to the civil penalties provided in section 95.3,
20 an employer who violates section 95.2 commits a class "D"
21 felony.

22 Sec. 5. NEW SECTION. 95.5 Enforcement — rules.

23 1. The department shall enforce this chapter. The
24 department may establish additional procedures to implement
25 this chapter and may employ inspectors and any other personnel
26 deemed necessary to implement this chapter, subject to the
27 provisions of chapter 8A, subchapter IV.

28 2. The department shall adopt rules pursuant to chapter 17A
29 to administer this chapter.

30 Sec. 6. APPLICABILITY. This Act applies to
31 misclassification, as defined in section 95.1, as enacted by
32 this Act, of an individual by an employer occurring on or after
33 the effective date of this Act.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill prohibits an employer from willfully
3 misclassifying an individual who performs services for
4 the employer in return for remuneration as an independent
5 contractor rather than an employee with the effect of denying
6 the individual eligibility for an employment benefit provided
7 by law or for a government program. Whether an individual
8 performs services as an employee or independent contractor
9 is determined under regulations or guidelines of the federal
10 internal revenue service in effect as of the date of an alleged
11 misclassification. The bill is enforced by the department of
12 workforce development.

13 An employer who violates this prohibition shall be subject
14 to a civil penalty of up to \$5,000 per misclassified individual
15 for a first offense, up to \$7,500 per misclassified individual
16 for a second offense, and up to \$10,000 per misclassified
17 individual for each subsequent offense.

18 The department shall provide written notice to an employer
19 prior to imposition of a civil penalty. An employer may
20 contest and seek judicial review of a determination of
21 the department pursuant to Code chapter 17A. An employer
22 shall bear the burden of proving that the employer did not
23 misclassify an individual. Upon a final determination of the
24 department that a violation occurred and the conclusion of the
25 period for any appeals, the department shall bring an action in
26 district court to collect the civil penalties for deposit in
27 the general fund and refer the violation to a county attorney.
28 A county attorney shall not be bound by any determination of
29 the department.

30 An employer who misclassifies an individual in violation of
31 the bill commits a class "D" felony. A class "D" felony is
32 punishable by confinement for no more than five years and a
33 fine of at least \$1,025 but not more than \$10,245.

34 The bill applies to misclassification of an individual by an
35 employer occurring on or after the effective date of the bill.