

SENATE BILL NO. 472

BY SENATOR MURRAY

1 AN ACT

2 To amend and reenact R.S. 23:1761(9) and to enact R.S. 23:1472(12)(H)(XXII) and
3 1711(G), relative to unemployment compensation; to provide for employers'
4 classification of workers; to provide for independent contractors; to provide for
5 penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1761(9) is hereby amended and reenacted and R.S.
8 23:1472(12)(H)(XXII) and 1711(G) are hereby enacted to read as follows:

9 §1472. Definitions

10 * * *

11 (12) * * *

12 H. The term "employment" shall not include:

13 * * *

14 **XXII. The services performed by an individual who meets the definition**
15 **of an owner-operator as is defined in R.S. 23:1021(10).**

16 * * *

17 §1711. False statements or representations; failure to file reports or maintain
18 records; duties of officers and agents; presumptive proof; penalties

19 * * *

20 **G. Misclassification of employees as independent contractors**

21 **(1)(a) Written warning. If the administrator determines, after**
22 **investigation, that an employer, or any officer, agent, superintendent, foreman,**
23 **or employee of the employer, failed to properly classify an individual as an**
24 **employee in accordance with this Chapter, and failed to pay contributions**
25 **required by this Chapter, but the failure was not knowing or willful, the**
26 **employer shall be issued a written warning as evidence that the employer has**
27 **been cited for a first offense of misclassification. Such warning shall constitute**

1 a determination that any workers identified therein are employees, and all
2 resulting contributions, interest and penalties shall be due, and shall be
3 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,
7 or employee of the employer, after June 30, 2013, and subsequent to the
8 issuance of a written warning, failed to properly classify an individual as an
9 employee and failed to pay contributions in accordance with this Chapter, then,
10 in addition to any contributions, interest, and penalties otherwise due, the
11 administrator may assess an administrative penalty of not more than two
12 hundred fifty dollars per each such individual. Thereafter, any such failure by
13 an employer to properly classify an individual as an employee and pay
14 contributions due shall be subject to an administrative penalty of not more than
15 five hundred dollars per each such individual. In determining the amount of
16 the administrative penalty imposed, the administrator shall consider factors
17 including previous violations by the employer, the seriousness of the violation,
18 the good faith of the employer, and the size of the employer's business.

19 (c) If, after an employer has been issued a written warning and is
20 subsequently found, on two or more separate occasions, to have failed to
21 properly classify an individual as an employee, the employer may also be
22 subject to an additional fine of not less than one hundred dollars nor more than
23 one thousand dollars, or imprisoned for not less than thirty days nor more than
24 ninety days, or both. For the purpose of this Subsection, each employee so
25 misclassified shall constitute a separate offense.

26 (d) No such determination shall be final or effective, and no resulting
27 administrative penalty shall be assessed, unless the administrator first provides
28 the employer with written notification by certified mail of the determination,
29 including the amount of the proposed contributions, interest, and penalties
30 determined to be due and of the opportunity to request a fair hearing, of which

1 a record shall be made within ten days of the mailing of such notice. The
2 hearing request may be made by mail, as evidenced by the official postmarked
3 date, or by otherwise timely delivering such appeal. If the employer does not
4 request a hearing within the ten-day period the determination shall become
5 final and effective, and the contributions, interest, and penalties due shall be
6 assessed.

7 (2) If a timely hearing request is made, the findings and conclusions of
8 the hearing officer shall be appealable by judicial review as a final assessment
9 in accordance with the provisions of R.S. 23:1728.

10 (3)(a) Upon a final determination that an employer or any officer, agent,
11 superintendent, foreman, or employee of the employer knowingly or willfully
12 failed to properly classify an individual as an employee in accordance with this
13 Chapter and failed to pay required contributions, then, in addition to the
14 penalties provided herein, the employer shall be prohibited from contracting,
15 directly or indirectly, with any state agency or political subdivision of the state
16 for a period of three years from the date upon which the determination becomes
17 final.

18 (b) The division of administration shall maintain and place the employer
19 on a list of such employers and make that list available to state agencies and
20 political subdivisions of the state.

21 (4) Notice requirements. Every employer shall post in a prominent and
22 accessible location at each of its business premises a poster provided by the
23 administrator that describes the responsibilities of independent contractors to
24 pay taxes as required by state and federal laws, the rights of employees to
25 workers' compensation and unemployment benefits, protections against
26 retaliation, and the penalties if the employer fails to properly classify an
27 individual as an employee. The notice shall also contain contact information for
28 individuals to file complaints or obtain information regarding employment
29 classification.

30 * * *

1 §1761. Definitions

2 As used in this Chapter, the following terms shall have the meanings
3 hereinafter ascribed to them:

4 * * *

5 (9) "Staffing service" means any person **or entity**, other than a professional
6 employer organization, that ~~hires its own employees and assigns them~~ **supplies**
7 **workers** to a client to support or supplement the client's workforce. It includes
8 temporary staffing services and leasing companies that supply employees to clients
9 in special work situations such as employee absences, temporary ~~skill~~ **worker**
10 shortages, seasonal workloads, and special assignments and projects, **and other**
11 **similar work situations.**

12 * * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____