

FIRST REGULAR SESSION

SENATE BILL NO. 313

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time January 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1204S.011

AN ACT

To repeal section 285.500, RSMo, and to enact in lieu thereof two new sections relating to the misclassification of workers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 285.500, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 285.500 and 285.509, to read as follows:

285.500. For the purposes of sections 285.500 to 285.515 the following terms mean:

(1) "Employee", any [individual] **worker who is not an independent contractor and** who performs services for an employer [that would indicate an employer-employee relationship in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.];

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works as defined in section 290.210;

(3) "**Independent contractor**", a person who:

(a) **Signs a written contract with an employer that states the employer's intent to retain the services of the person as an independent contractor and contains acknowledgments that the person understands that he or she is:**

a. **Providing services for the employer as an independent contractor;**

b. **Not going to be treated as an employee of the employer;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 c. Not going to be provided by the employer with either workers'
20 compensation benefits pursuant to chapter 287 or unemployment
21 compensation benefits pursuant to chapter 288;

22 d. Obligated to pay all applicable federal and state income taxes,
23 if any, on any monies earned pursuant to the contractual relationship,
24 and that the employer will not make any tax withholdings from any
25 payments from the employer; and

26 e. Responsible for the majority of supplies and other variable
27 expenses that he or she incurs in connection with performing the
28 contracted services unless:

29 (i) The expenses are for travel that is not local;

30 (ii) The expenses are reimbursed under an express provision of
31 the contract; or

32 (iii) The supplies or expenses reimbursed are commonly
33 reimbursed under industry practice;

34 (b) Has filed, intends to file, or is contractually required to file,
35 in regard to the fees earned from work, an income tax return with the
36 Internal Revenue Service for a business or for earnings from self-
37 employment;

38 (c) Provides his or her services through a business entity,
39 including but not limited to, a partnership, limited liability company
40 or corporation, or through a sole proprietorship;

41 (d) Has the right to control the manner and means by which the
42 work is to be accomplished, even though he or she may not have control
43 over the final result of the work, provided that the employer may
44 provide orientation, information, guidance, or suggestions about the
45 employer's products, business, services, customers and operating
46 systems, and training otherwise provided by law; or

47 (e) Satisfies three or more of the following:

48 a. The person controls the amount of time personally spent
49 providing services, provided that an agreement may be made with the
50 employer relating to the final completion or final delivery time or
51 schedule, range of hours, or the time entertainment is to be presented
52 if the work contracted for is entertainment;

53 b. The person has control over where the services are performed,
54 except in the case of services that can only be performed at certain
55 locations;

56 c. The person is not required to work exclusively with one
57 employer, unless:

58 (i) A law, regulation, or ordinance prohibits the person from
59 providing services to more than one employer; or

60 (ii) A license or permit that the person is required to maintain
61 in order to perform the work limits the person to working for only one
62 employer at a time requires identification of the employer;

63 d. The person is free to exercise independent initiative in
64 soliciting others to purchase his or her services;

65 e. The person is free to hire employees or to contract with
66 assistants, helpers, or substitutes to perform all or some of the work;

67 f. The person cannot be required to perform additional services
68 without a new or modified contract;

69 g. The person obtains a license or other permission from the
70 principal to utilize any workspace of the employer in order to perform
71 the work for which the person was engaged;

72 h. The employer has been subject to an employment audit by the
73 Internal Revenue Service and the Internal Revenue Service has not
74 reclassified the person to be an employee or has not reclassified the
75 category of workers to be employees; and

76 i. The person is responsible for maintaining and bearing the
77 costs of any required business licenses, insurance, certifications, or
78 permits required to perform services;

79 (4) "Knowingly", [a person] an employer acts knowingly or with
80 knowledge:

81 (a) With respect to the person's conduct or to attendant circumstances
82 when the person is aware of the nature of the person's conduct or that those
83 circumstances exist; or

84 (b) With respect to a result of the person's conduct when the person is
85 aware that the person's conduct is practically certain to cause that result.

285.509. No political subdivision of the state shall enact,
2 establish, mandate, or otherwise implement any law, ordinance, or
3 regulation in conflict with the provisions of sections 285.500 to 285.515.

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