

SECOND REGULAR SESSION

SENATE BILL NO. 740

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3411S.011

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to the misclassification of workers.

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

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.517, to read as follows:

285.517. 1. Any person who performs work for any employer and satisfies all of the following criteria shall be considered an independent contractor:

(1) The person has signed a written contract with the 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;

(c) Not going to be provided by the employer with either workers' compensation benefits pursuant to chapter 287 or unemployment compensation benefits pursuant to chapter 288;

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

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

a. The expenses are for travel that is not local;

22 **b. The expenses are reimbursed under an express provision of**
23 **the contract; or**

24 **c. The supplies or expenses reimbursed are commonly**
25 **reimbursed under industry practice;**

26 **(2) The person has filed, intends to file, or is contractually**
27 **required to file, in regard to the fees earned from work, an income tax**
28 **return with the Internal Revenue Service for a business or for earnings**
29 **from self-employment;**

30 **(3) The person provides his or her services through a business**
31 **entity, including but not limited to, a partnership, limited liability**
32 **company or corporation, or through a sole proprietorship;**

33 **(4) The person has the right to control the manner and means by**
34 **which the work is to be accomplished, even though he or she may not**
35 **have control over the final result of the work, provided that the**
36 **employer may provide orientation, information, guidance, or**
37 **suggestions about the employer's products, business, services,**
38 **customers and operating systems, and training otherwise provided by**
39 **law; and**

40 **(5) The person satisfies three or more of the following:**

41 **(a) The person controls the amount of time personally spent**
42 **providing services, provided that an agreement may be made with the**
43 **employer relating to the final completion or final delivery time or**
44 **schedule, range of hours, or the time entertainment is to be presented**
45 **if the work contracted for is entertainment;**

46 **(b) The person has control over where the services are**
47 **performed, except in the case of services that can only be performed at**
48 **certain locations;**

49 **(c) The person is not required to work exclusively with one**
50 **employer, unless:**

51 **a. A law, regulation, or ordinance prohibits the person from**
52 **providing services to more than one employer; or**

53 **b. A license or permit that the person is required to maintain in**
54 **order to perform the work limits the person to working for only one**
55 **employer at a time and requires identification of the employer;**

56 **(d) The person is free to exercise independent initiative in**
57 **soliciting others to purchase his or her services;**

58 **(e) The person is free to hire employees or to contract with**

59 assistants, helpers, or substitutes to perform all or some of the work;

60 (f) The person cannot be required to perform additional services
61 without a new or modified contract;

62 (g) The person obtains a license or other permission from the
63 employer to utilize any workspace of the employer in order to perform
64 the work for which the person was engaged;

65 (h) The employer has been subject to an employment audit by the
66 Internal Revenue Service and the Internal Revenue Service has not
67 reclassified the person to be an employee or has not reclassified the
68 category of workers to be employees; and

69 (i) The person is responsible for maintaining and bearing the
70 costs of any required business licenses, insurance, certifications, or
71 permits required to perform services.

72 2. No employer shall be required to classify a person who is
73 considered an independent contractor under subsection 1 of this
74 section as an employee, provided that the employer may choose to hire
75 and classify such person as an employee at any time.

76 3. No political subdivision of the state shall enact, establish,
77 mandate, or otherwise implement any law, ordinance, or regulation in
78 conflict with the provisions of this section.

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