

FIRST REGULAR SESSION

SENATE BILL NO. 148

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

0265S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to the classification 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
2 one new section, to be known as section 285.517, to read as
3 follows:

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

4 (1) The person has signed a written contract with the
5 employer that states the employer's intent to retain the
6 services of the person as an independent contractor and
7 contains acknowledgments that the person understands that he
8 or she is:

9 (a) Providing services for the employer as an
10 independent contractor;

11 (b) Not going to be treated as an employee of the
12 employer;

13 (c) Not going to be provided by the employer with
14 either workers' compensation benefits pursuant to chapter
15 287 or unemployment compensation benefits pursuant to
16 chapter 288;

17 (d) Obligated to pay all applicable federal and state
18 income taxes, if any, on any moneys earned pursuant to the

19 contractual relationship, and that the employer will not
20 make any tax withholdings from any payments from the
21 employer; and

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

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

26 b. The expenses are reimbursed under an express
27 provision of the contract; or

28 c. The supplies or expenses reimbursed are commonly
29 reimbursed under industry practice;

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

34 (3) The person provides his or her services through a
35 business entity, including but not limited to, a
36 partnership, limited liability company or corporation, or
37 through a sole proprietorship;

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

45 (5) The person satisfies three or more of the
46 following:

47 (a) The person controls the amount of time personally
48 spent providing services, provided that an agreement may be
49 made with the employer relating to the final completion or
50 final delivery time or schedule, range of hours, or the time

51 entertainment is to be presented if the work contracted for
52 is entertainment;

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

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

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

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

64 (d) The person is free to exercise independent
65 initiative in soliciting others to purchase his or her
66 services;

67 (e) The person is free to hire employees or to
68 contract with assistants, helpers, or substitutes to perform
69 all or some of the work;

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

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

76 (h) The employer has been subject to an employment
77 audit by the Internal Revenue Service and the Internal
78 Revenue Service has not reclassified the person to be an
79 employee or has not reclassified the category of workers to
80 be employees; or

81 (i) The person is responsible for maintaining and
82 bearing the costs of any required business licenses,

83 insurance, certifications, or permits required to perform
84 services.

85 2. No employer shall be required to classify a person
86 who is considered an independent contractor under subsection
87 1 of this section as an employee, provided that the employer
88 may choose to hire and classify such person as an employee
89 at any time.

90 3. No political subdivision of the state shall enact,
91 establish, mandate, or otherwise implement any law,
92 ordinance, or regulation in conflict with the provisions of
93 this section.

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