
Labor & Workforce Development Committee

HB 2147

Brief Description: Concerning voluntary independent contractor certification.

Sponsors: Representatives Condotta and Buys.

Brief Summary of Bill

- Allows persons who meet certain requirements to obtain an independent contractor exemption certificate from the Department of Labor and Industries.
- Provides that persons working under a certificate are exempt from industrial insurance, minimum wage and overtime, prevailing wage, and unemployment insurance.

Hearing Date: 1/21/14

Staff: Joan Elgee (786-7106).

Background:

Employment standards and benefits generally apply only if an employer-employee relationship exists rather than an independent contractor relationship. Various multi-part tests are used to determine whether an individual is an independent contractor. For purposes of prevailing wage, industrial insurance, and unemployment insurance, a six-part statutory independent contractor test is applied. This test requires that:

- The individual has been and will be free from direction and control, both under the contract and in fact;
- The individual's services are outside the usual course of business for which the service is performed, or outside all the places of business, or the individual must pay the costs of the principal place of business where the services are performed;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- The individual has an independently established business, or a principal place of business that qualifies for an Internal Revenue Service (IRS) deduction;
- The individual is responsible for filing a schedule of expenses with the IRS;
- The individual has a separate set of books and records that reflect all items of income and expenses; and
- The individual has an active and valid registration with the Department of Revenue, has a unified business identifier number, and has any other required state accounts for the payment of taxes.

In the construction industry, a seventh required element is that the individual be registered as a contractor or licensed as an electrical contractor. (For industrial insurance, a threshold question is whether a person under contract brings more than their personal labor to the job and for unemployment insurance, persons may also be independent contractors under an alternative three part test.) For purposes of minimum wage and overtime, a common law test, known as the economic dependence test, applies. The inquiry under this test is whether the worker is economically dependent on the alleged employer or is instead in business for himself or herself.

The Department of Labor and Industries and the Employment Security Department apply the tests to determine if a worker is eligible for the benefits of the particular employment law and whether the employer is responsible for the payment of wages or taxes as appropriate for the particular law.

Summary of Bill:

Independent contractor exemption certificate. A person who regularly and customarily performs services at a location other than a fixed business location may apply to the Department of Labor and Industries (Department) for an independent contractor exemption certificate (ICEC). A person working under an ICEC is conclusively presumed to be an exempt independent contractor for purposes of industrial insurance. "Working under" an ICEC means the person is performing work on the type listed on the ICEC and there is no agreement that the person is covered by industrial insurance. In addition, a person working under an ICEC certificate is also exempt from minimum wage and overtime, prevailing wage, and unemployment insurance.

Obtaining an ICEC. An ICEC application must be under oath and contain specified items, including:

- Identification of each trade, occupation, business, or profession for which the applicant seeks certification.
- A statement that the applicant meets a test:
 - The applicant has been and will continue to be free from direction or control over the performance of the applicant's own services, both under contract and in fact; and
 - The applicant is engaged in an independently established trade, occupation, business, or profession.
- A statement that the applicant understands he or she is not eligible for benefits, unless coverage is elected.
- Documentation that the applicant has an active and valid account with the Department of Revenue, any active and valid credentials required by the state for the trade, occupation, business, or profession, and any required registration with the Secretary of State.

Suspension/revocation of an ICEC. The Department may suspend an ICEC for a specific business relationship if the Department determines the holder is not free from direction or control. The Department may revoke an ICEC if the holder:

- made misrepresentations in the application or renewal form;
- altered or amended the application or renewal form, supporting documentation, or the ICEC;
- failed to cooperate with the Department in providing information relevant to the validity of the ICEC; or
- does not have a independently established business.

Suspension or revocation of an ICEC takes effect upon the Department's decision, subject to appeal, and does not invalidate the holder's ineligibility for benefits for the period before suspension or revocation.

Penalties. It is a violation for a person to transfer an ICEC to another person, alter an ICEC, misrepresent the person's status as an ICEC holder, or commit other acts. For an employer, it is a violation to require a person through coercion, misrepresentation, or fraudulent means to apply for an ICEC to avoid industrial insurance obligations or to exert direction and control such that the person no longer meets requirements to obtain an ICEC. Violators are subject to a fine of up to \$1,000 for each violation.

Appeals of denials of ICEC applications, suspensions, revocations, and penalties are heard by the Board of Industrial Insurance Appeals.

Fee/revenue. The application and renewal fee must be not more than \$125. Fees and fines are deposited into a newly created ICEC account, which is subject to appropriation. Expenditures may be used only for purposes of the ICEC program.

Other. A person working under an ICEC is an independent contractor for business and occupation tax purposes. The Department has rule-making authority. Persons may begin applying for an ICEC on September 1, 2014.

Appropriation: None.

Fiscal Note: Requested on January 15, 2014.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.