

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 31

By: Bergstrom

AS INTRODUCED

An Act relating to independent contractor classification; creating the Uniform Worker Classification Act; providing short title; stating purpose; including and interpreting other provisions of law; stating criteria to determine independent contractor; requiring certain classification based on criteria; construing right of principal to hire employee; requiring uniform classification of workers within state; directing political subdivision to use certain criteria to determine worker classification; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 720 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Worker Classification Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 720.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

1 The purpose of the Uniform Worker Classification Act is to bring
2 clarity, certainty, and uniformity under the laws of this state to
3 differentiate employees from independent contractors in employment
4 and to impose objective and uniform standards for making that
5 distinction. All laws where the application thereof is contingent
6 upon the classification of a worker as being an employee are hereby
7 superseded and interpreted to the extent necessary by this act
8 including, but not limited to, any workers' compensation,
9 unemployment compensation, wage, civil rights, and tort claims laws
10 codified in the statutes of this state.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 720.2 of Title 40, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Subject only to the provisions of subsection B of this
15 section, a person shall be classified as an independent contractor
16 under the laws of this state including, but not limited to, those
17 laws codified in statute and identified in Section 1 of this act,
18 if:

19 1. The person signs a written contract with the principal, in
20 substantial compliance with the terms of this subsection, that
21 states the principal's intent to retain the services of the person
22 as an independent contractor and contains acknowledgements that the
23 person understands that he or she is:

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- a. providing services for the principal as an independent contractor,
- b. not going to be treated as an employee of the principal,
- c. not going to be provided by the principal with either worker's compensation or unemployment compensation benefits,
- 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 principal will not make any tax withholdings from any payments from the principal, and
- e. responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted for services unless: the expenses are for travel that is not local, the expenses are reimbursed under an express provision of the contract, or the supplies or expenses reimbursed are commonly reimbursed under industry practice;

2. The person has either filed, intends to file, or is contractually required to file, in regard to the fees earned from the work, an income tax return with the Internal Revenue Service (IRS) for a business or for earnings from self-employment, or provides his or her services through a business entity including,

1 but not limited to, a partnership, limited liability company or
2 corporation, or through a sole proprietorship registered with a DBA
3 as required under state or local law;

4 3. With the exception of the exercise of control necessary to
5 ensure compliance with statutory, regulatory, licensing, permitting,
6 or other similar obligations required by a governmental or
7 regulatory entity, or to protect persons or property or to protect a
8 franchise brand, the person has the right to control the manner and
9 means by which the work is to be accomplished, even though he or she
10 may not have control over the final result of the work. This
11 provision is satisfied even though the principal may provide
12 orientation, information, guidance, or suggestions about the
13 principal's products, business, services, customers and operating
14 systems, and training otherwise required by law;

15 4. The person satisfies three or more of the following
16 criteria:

- 17 a. except for an agreement with the principal relating to
18 final completion or final delivery time or schedule,
19 range of work hours, or the time entertainment is to
20 be presented if the work contracted for is
21 entertainment, the person has control over the amount
22 of time personally spent providing services,
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- 1 b. except for services that can only be performed at
2 specific locations, the person has control over where
3 the services are performed, or
4 c. the person is not required to work exclusively for one
5 principal unless:
6 (1) a law, regulation, or ordinance prohibits the
7 person from providing services to more than one
8 principal, or
9 (2) a license or permit that the person is required
10 to maintain in order to perform the work limits
11 the person to working for only one principal at a
12 time or requires identification of the principal,
13 and
14 d. the person is free to exercise independent initiative
15 in soliciting others to purchase his or her services,
16 and
17 e. the person is free to hire employees or to contract
18 with assistants, helpers, and/or substitutes to
19 perform all or some of the work;

20 5. The person cannot be required to perform additional services
21 without a new or modified contract;

22 6. The person obtains a license or other permission from the
23 principal to utilize any workspace of the principal in order to
24 perform the work for which the person was engaged;

1 7. The principal has been subject to an employment audit by the
2 Internal Revenue Service and the IRS has not reclassified the person
3 to be an employee or has not reclassified the category of workers to
4 be employees;

5 8. The person is responsible for maintaining and bearing the
6 costs of any required business licenses, insurance, certifications,
7 or permits required to perform the services; or

8 9. The person meets the standards promulgated by the Internal
9 Revenue Service for an independent contractor or is an incorporated
10 business entity.

11 B. All workers who do not satisfy the criteria set forth in
12 subsection A of this section shall be classified as employees. In
13 addition, nothing contained in subsection A of this section shall
14 require a principal to classify a worker who meets the criteria
15 contained therein as an independent contractor; the principal always
16 being free to hire the worker as an employee.

17 C. The state and its political subdivisions shall determine and
18 classify independent contractor status uniformly. Each political
19 subdivision shall utilize the provisions of this section to
20 determine independent contractor status.

21 SECTION 4. This act shall become effective November 1, 2023.

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