Uniform Worker Classification Act

Summary

There is a lack of clarity in the workforce marketplace and in the law as to which workers are employees and which ones are truly independent contractors. Confusion as to the precise definition of an independent contractor has contributed to conflicting decisions by the courts on this matter. In addition, a worker can be subjected to various laws where he or she may be found to be an employee under one law but an independent contractor under another. This Uniform Worker Classification Act simplifies the criteria used to define independent contractors with respect to employment, and imposes objective standards on the differentiation of independent contractors from employees. This Act also provides for uniformity of a state’s laws where the distinction between employees and independent contractors is relevant.

Section 1. {Short Title.} This Act shall be known as the Uniform Worker Classification Act.

Section 2. {Legislative Declarations.}

FINDINGS:

The Legislature Finds:

(A)——Recent developments in the workforce marketplace, and in particular with the advent of the so-called “gig,” “entrepreneurial,” or “sharing” economy, have highlighted the uncertainty that currently exists with determining the correct classification of workers as independent contractors or employees. The proper classification of workers as employees or independent contractors is a complex legal issue that vexes workers and businesses as well as lawyers and the courts.

(B)——Not only are the legal standards used to differentiate employees from independent contractors generally subjective in nature, but those standards differ based on the particular law at issue. As a result, some workers may be found to be employees under one law but independent contractors under another law, leaving the same person classified as an employee for some purposes but as an independent contractor for other purposes.

(C)——It is in the best interests of this State, workers, and businesses for there to be certainty regarding the legal status of workers and their applicable rights and obligations. Clarity in a worker’s classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits and obligations, and minimizes unnecessary mistakes, litigation, risk, and legal exposure.

(D)——It is in the best interests of workers, business, and government to have clear, objective, and uniform standards for determining who is an employee and who is an independent contractor.

(E)——The purpose of this Bill is to bring uniformity in the laws and clarity to the marketplace regarding the distinction between employees and independent contractors. By doing so, the State will ensure that workers who are indeed “employees” are properly classified as such and will be afforded with the legal protections and obligations that apply to such status, and that workers who desire to be, and meet the standards of being, independent contractors will be entitled to the freedoms that such a relationship provides; all of which will reduce unnecessary and costly litigation and confusion in the workforce marketplace and in the courts.
Section 3. {Included Laws/Repealer Clause.}

The purpose of this Uniform Worker Classification Act is to bring clarity, certainty, and uniformity under the laws of this State with regard to differentiating employees from independent contractors in employment, and by imposing objective and uniform standards for making that distinction. Consequently, all laws where the application thereof is contingent upon the classification of a worker as being an employee are superseded to the extent necessary, by this Act, including but not limited to _____________________________ {Include citations to relevant state laws, such as workers’ compensation act, unemployment compensation act; state wage act; civil rights act, tort claims act; etc.}.

Section 4. {Classification of Independent Contractors and Employees.}

(A) Subject only to the provisions of subsection 4(B), a person shall be conclusively presumed to be classified as an independent contractor under the laws of this State, including but not limited to those laws identified in Section 3, if who performs work for any employer and satisfies all of the following criteria:

1. The person has signed a written contract with the principal, in substantial compliance with the terms of this subsection, that states the principal’s intent to retain the services of the person as an independent contractor and contains acknowledgements that the person understands that he/she is:

   i. Providing required by the contract to hold any state or local business license and to maintain any occupational license necessary to perform such services for the principal as an independent contractor;

   ii. Not going to be treated as an employee of the principal;

   iii. Not going to be provided by the principal with either worker’s compensation or unemployment compensation benefits;

   iv. 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;

   v. Responsible for the majority of supplies and other variable expenses that he/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/and expenses reimbursed are commonly reimbursed under industry practice; and

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 for a business or for earnings from self-employment; or

3. The person provides his or her services through a business entity, including but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship registered with a DBA as required under state or local law; and

4. With the exception of the exercise of control by the party that engages the worker necessary to ensure the worker’s compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a
governmental or regulatory entity, or to protect persons and/or property, or to protect a franchise brand, (such as evaluating a worker's compliance with a franchise brand's standards) the worker.

3. The person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work. This provision is satisfied even though the party, provided that engages the worker provides orientation, information, guidance, or suggestions about the employer's products, business, processes, services, customers, and training otherwise provided by law; provided further, that the required important deployment, implementation, or use of any safety improvement by an independent contractor as required by contract or otherwise shall not be considered when evaluating status as an employee or independent contractor under any state law. For purposes of this section, “safety improvement” shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to protect a franchise brand’s standards or by law to improve or facilitate compliance with state, federal or local safety laws or regulations or general safety concerns.

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

(a.) Except for the work contracted for is entertainment, the person has control over the amount of time personally spent providing services.

(b.) Except for services that can only be performed at specific locations, the person has control over where the services are performed, except in the case of services that can only be performed at certain locations.

(c.) The person is not required to work exclusively for one employer, unless:

i. A law, regulation, or ordinance prohibits the person from providing services to more than one engaging employer; or

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

(d.) The person is free to exercise independent initiative in soliciting others to purchase his or her services.

(e.) The person is free to hire employees or to contract with assistants, helpers, and/or substitutes to perform all or some of the work.

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

(g.) The person obtains a license or other permission from the principal employer to utilize any workspace of the engaging employer in order to perform the work for which the person was engaged.

(h.) The engaging employer has been subject to an employment audit by the Internal Revenue Service and the IRS has not reclassified the person to be an employee or has not reclassified the category of workers to be employees; or
(1) The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform the services.

(B) All workers. A person who does not conclusively presumed to be an independent contractor for failure to satisfy the criteria set forth in subsection (A) Section (4) shall be classified as employees. In addition, nothing contained in subsection (A) not be presumed to be an employee.

(C) No employer shall require a party engaging a worker be required to classify a worker person who meets is considered an independent contractor under Section 4 as an employee, provided that the criteria contained therein as an independent contractor; the party engaging the worker is always being free employer may choose to hire the worker and classify such person as an employee at any time.

Section 5. It is the intent

(D) This section shall not apply to:

(1) Entities described in section 501(c)(3) of the state legislature to provide for the uniformity of laws governing the determination of independent contractor status. No city, county, municipality, unincorporated community, township, parish, special district, airport authority, port authority, Internal Revenue Code of 1986, as amended;

(2) State or other local government entities; or

(3) Federally recognized Indian tribes.

(E) This section shall not overrule any exemptions from the definition of employee or employment found in other sections of state law.

Section 5. No political subdivision may pass the state shall enact, establish, mandate, or otherwise implement any law, ordinance, or regulation, code, charter, regulation or other guidance in conflict with this Act.

Section 6. The provisions of this statute do not apply to employers as defined under Section 3309 of the Federal Unemployment Tax Act (26 U.S. Code §3309). Section.

Section 7. Section 6. (Severability Clause.)

Section 8. (Effective Date.)