

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1137
100TH GENERAL ASSEMBLY

2357H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 285.500, RSMo, and to enact in lieu thereof two new sections relating to misclassification of workers.

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

Section A. Section 285.500, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 285.500 and 285.517, to read as follows:

285.500. For the purposes of sections 285.500 to ~~[285.515]~~ **285.517** the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship ~~[in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.]~~ , **unless the individual satisfies the independent contractor requirement under section 285.517;**

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works as defined in section 290.210;

(3) "Knowingly", a person acts knowingly or with knowledge:

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

17 c. The supplies or expenses reimbursed are commonly reimbursed under industry
18 practice;

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

22 (3) The person provides his or her services through a business entity including, but
23 not limited to, a partnership, limited liability company, or corporation, or through a sole
24 proprietorship;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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