Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 18

HOUSE BILL 2279

AN ACT

AMENDING SECTIONS 23-613.01 AND 23-614, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-613.01, Arizona Revised Statutes, is amended to read:

23-613.01. Employee; definition; exempt employment

A. "Employee" means any individual who performs services for an employing unit and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished. Indications of control by the employing unit include controlling the individual's hours of work, location of work, right to perform services for others, tools, equipment, materials, expenses and use of other workers and other indicia of employment, except employee does not include:

1. An individual who performs services as an independent contractor, business person, agent or consultant, or in a capacity characteristic of an independent profession, trade, skill or occupation.

2. An individual subject to the direction, rule or control or subject to the right of direction, rule or control of an employing unit solely because of a provision of law regulating the organization, trade or business of the employing unit.

3. An individual or class of individuals that the federal government has decided not to and does not treat as an employee or employees for federal unemployment tax purposes.

4. An individual if the employing unit demonstrates the individual performs services in the same manner as a similarly situated class of individuals that the federal government has decided not to and does not treat as an employee or employees for federal unemployment tax purposes.

5. AN INDIVIDUAL TO WHOM ALL OF THE FOLLOWING APPLY:

(a) PERFORMS OFFICIATING SERVICES IN RECREATIONAL, INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTING EVENTS OR CONTESTS ON A CONTEST-BY-CONTEST BASIS.

(b) HAS THE ABILITY TO ACCEPT OR REJECT ASSIGNMENTS TO OFFICIATE A SPORTING EVENT OR CONTEST.

(c) HAS THE RIGHT TO OFFICIATE CONTESTS FOR MULTIPLE ORGANIZATIONS OR ENTITIES.

(d) IS NOT OTHERWISE EMPLOYED BY THE SPONSORING SCHOOL, ASSOCIATION OF SCHOOLS OR THE ORGANIZATION, THIS STATE, OR A POLITICAL SUBDIVISION OF THIS STATE SPONSORING THE SPORTING EVENT OR CONTEST.

B. FOR THE PURPOSES OF SUBSECTION A, PARAGRAPH 5 OF THIS SECTION, "OFFICIATING SERVICES" MEANS OVERSEEING THE PLAY OF A SPORTING EVENT OR CONTEST, JUDGING WHETHER THE RULES ARE BEING FOLLOWED AND PENALIZING PARTICIPANTS FOR INFRINGING THE RULES.

~~B.~~ C. Notwithstanding this section, an individual or class of individuals shall not be treated as an employee by the department for purposes of this chapter if, before the department's determination that the individual or class of individuals at issue is an employee:

1. The individual or class of individuals had been performing services for the employing unit.

2. The department had inspected work records of the employing unit for time periods that the individual or class of individuals had been performing these services.

3. The individual or class of individuals at issue was not included on the contribution and wage reports of the employing unit.

4. After its inspection the department concluded in writing provided to the employing unit that either:

(a) No change or changes in the inspected reports were necessary.

(b) The individual or class of individuals in question did not constitute an employee for purposes of this chapter.

5. At no time between the date of the written determination prescribed in paragraph 4 of this subsection, and the department's subsequent conclusion that the individual or class of individuals at issue constitutes an employee, did the department notify the employing unit in writing that the individual or class of individuals at issue now constitutes an employee for purposes of this chapter.

~~C.~~ D. Subsection ~~B~~ C of this section ~~shall~~ DOES not apply if either:

1. There has been a substantial and material change in the facts upon which the writing required by subsection ~~B~~ C, paragraph 4 of this section was based.

2. The conclusion reached by the department pursuant to subsection ~~B~~ C, paragraph 4 of this section was the result of false statements, misrepresentation, fraud or intimidation on the part of the employing unit.

~~D.~~ E. The following services are exempt employment under this chapter, unless there is evidence of direction, rule or control sufficient to satisfy the definition of an employee under subsection A of this section, which is distinct from any evidence of direction, rule or control related to or associated with establishing the nature or circumstances of the services considered pursuant to this subsection:

1. Services which are not a part or process of the organization, trade or business of an employing unit and which are performed by an individual who is not treated by the employing unit in a manner generally characteristic of the treatment of employees.

2. Services performed by an individual for an employing unit through isolated or occasional transactions, regardless of whether such services are a part or process of the organization, trade or business of the employing unit.

~~E.~~ F. Notwithstanding this section, an individual or class of individuals determined to be an employee or employees for purposes of the federal unemployment tax act, as amended (26 United States Code sections 3301 through 3311), are employees under this chapter.

~~F.~~ G. Notwithstanding any other provision of this chapter, this section ~~shall apply~~ APPLIES to an employing unit to which the provisions of

section 23-750 apply only to the extent not inconsistent with the requirements of 26 United States Code sections 3304 (a)(6) and 3309.

Sec. 2. Section 23-614, Arizona Revised Statutes, is amended to read:

23-614. Employing unit; temporary services employer; professional employer organization; definitions

A. "Employing unit" means an individual or type of organization, including a partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936 had, one or more individuals performing services for it within this state. Effective January 1, 1962, "employing unit" ~~shall include~~ INCLUDES any federal instrumentality ~~which~~ THAT is neither wholly nor partially owned by the United States and ~~which~~ THAT has one or more individuals performing services for it within this state.

B. ~~All individuals performing~~ EACH INDIVIDUAL WHO PERFORMS services within this state for an employing unit ~~which~~ THAT maintains two or more separate establishments within this state ~~shall be deemed to be~~ IS performing services for a single employing unit for all the purposes of this chapter.

C. Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit ~~shall be deemed to be~~ IS engaged by the employing unit for all the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work. Notwithstanding any other provision of this chapter except for section 23-612.01, an individual who performs services in or for a particular employing unit ~~shall~~ IS not ~~be deemed to be~~ in the employment of such employing unit if such individual's wages for services in or for the particular employing unit are paid by another employing unit, and if the contributions required by this chapter on such wages are paid by such other employing unit.

D. Notwithstanding any other provision of this chapter, whether an individual or entity is the employer of specific employees shall be determined by section 23-613.01, except as provided in subsections E and G of this section with respect to a professional employer organization or a temporary services employer. THE EXCEPTIONS TO THE DEFINITION OF EMPLOYEE PRESCRIBED IN SECTION 23-613.01, SUBSECTION A APPLY TO DETERMINATIONS MADE PURSUANT TO SUBSECTIONS E, F, G AND H OF THIS SECTION.

E. A professional employer organization or a temporary services employer that contracts to supply a worker to perform services for a customer or client is the employer of the worker who performs the services. A customer or client who contracts with an individual or entity that is not a professional employer organization or a temporary services employer to engage a worker to perform services is the employer of the worker who performs the services. Except as provided in subsection F of this section, an individual or entity that is not a professional employer organization or a temporary

services employer, that contracts to supply a worker to perform services to a customer or client and that pays remuneration to the worker acts as the agent of the employer for purposes of payment of remuneration.

F. In circumstances that are in essence a loan of an employee to another employer and the direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer continues to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer is considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

G. A professional employer organization shall report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the professional employer organization.

H. On termination of a contract between a professional employer organization and a client or the failure by a professional employer organization to submit reports or make tax payments as required by this chapter, the client shall be treated as a new employer without a previous experience record if the client has been subject to a professional employer agreement for at least two years or if the client is not otherwise eligible for an experience rating.

I. For the purposes of this section:

1. "Professional employer organization" has the same meaning prescribed in section 23-561.

2. "Temporary services employer" means an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and that performs all of the following:

(a) Negotiates with clients or customers for such matters as the time of work, the place of work, the type of work, the working conditions, the quality of services and the price of services.

(b) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

(c) Retains the authority to assign or reassign a worker to other clients or customers if a worker is determined unacceptable by a specific client or customer.

(d) Assigns or reassigns the worker to perform services for a client or customer.

(e) Sets the rate of pay of the worker, whether or not through negotiation.

(f) Pays the worker from its own account or accounts.

(g) Retains the right to hire and terminate workers.

APPROVED BY THE GOVERNOR MARCH 28, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 28, 2013.

Passed the House February 18, 2013

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 19, 2013

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2279

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

March 27, 2013,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Pro Tempore

Cheryl Lamb

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

27 day of March, 2013,

at 2:40 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 28th day of

March, 2013,

at 2:31 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28th day of March, 2013,

at 5:07 o'clock P M.

Ken Bennett

Secretary of State

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