

## 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 \_\_\_\_\_ {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) For purposes of this section, any person is conclusively presumed to be an independent contractor who performs work for any employer and satisfies all of the following criteria:

- (1) The person has signed a written contract with the employer that states the employer's intent to retain the services of the person as an independent contractor and the person is required by the contract to hold any state or local business license and to maintain any occupational license necessary to perform such services; and
- (2)
  - (a) The person has filed, intends to file, or is contractually required to file, in regard to the fees earned from work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment; or
  - (b) 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; and
- (3) **With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental or regulatory entity, or to protect persons or property, or to protect a franchise brand,** 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, provided that the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise provided by law; provided further, that the required 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 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:
  - (a) The person controls the amount of time personally spent providing services, provided that an agreement may be made with the employer relating to the final completion or final delivery time or schedule, range of hours, or the time entertainment is to be presented if the work contracted for is entertainment;

(b) 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 with one employer, unless:

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

b. 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 employer at a time and requires identification of the 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, 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 employer to utilize any workspace of the employer in order to perform the work for which the person was engaged;

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

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

(B). A person who is not conclusively presumed to be an independent contractor for failure to satisfy the criteria set forth in Section (4) shall not be presumed to be an employee.

(C). No employer shall be required to classify a person who is considered an independent contractor under Section 4 as an employee, provided that the employer may choose to hire and classify such person as an employee at any time.

(D). This section shall not apply to:

(1) Entities described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(2) State or 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 of the state shall enact, establish, mandate, or otherwise implement any law, ordinance, or regulation in conflict with the provisions of this section.

Section 6. {Severability Clause.}

Section 7. {Effective Date.}

DRAFT