

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1850

By: Representative McCollum

By: Senator Hester

For An Act To Be Entitled

AN ACT TO ESTABLISH THE EMPOWER INDEPENDENT CONTRACTORS ACT OF 2019; TO AMEND PORTIONS OF THE LAW RESULTING FROM INITIATED ACT 4 OF 1948; TO AMEND THE LAW REGARDING DEFINITIONS OF "EMPLOYEE", "EMPLOYMENT", AND "EMPLOYMENT STATUS" IN TITLE 11; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE EMPOWER INDEPENDENT CONTRACTORS ACT OF 2019; TO AMEND PORTIONS OF THE LAW IMPACTING INITIATED ACT 4 OF 1948; AND TO AMEND DEFINITIONS OF "EMPLOYEE", "EMPLOYMENT", AND "EMPLOYMENT STATUS" WITHIN TITLE 11.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 11, Chapter 1, is amended to add a subchapter to read as follows:

Subchapter 1 – Empower Independent Contractors Act of 2019

11-1-101. Title.

This subchapter shall be known and may be cited as the "Empower Independent Contractors Act of 2019".

11-1-102. Purpose.



The purpose of this subchapter is to help employers create jobs, help individuals return to work and no longer need public assistance, and grow the economy.

11-1-103. Definition.

As used in this title, "employment status" means the status of an individual as an employee or independent contractor for employment purposes, including without limitation wages, taxation, and workers' compensation issues.

11-1-104. Determination of employment status.

For purposes of this title, an employer or agency charged with determining the employment status of an individual shall use the twenty-factor test enumerated by the Internal Revenue Service in Rev. Rul. 87-41, 1987-1 C.B. 296, in making its determination and shall consider whether:

(1) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work;

(2) A worker is required to receive training, including without limitation through:

(A) Working with an experienced employee;

(B) Corresponding with the person for whom a service is performed;

(C) Attending meetings; or

(D) Other training methods;

(3) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed;

(4) A worker's services are required to be performed personally, indicating an interest in the methods used and the results;

(5) A person for whom a service is performed hires, supervises, or pays assistants;

(6) A continuing relationship exists between a worker performing services and a person for whom a service is performed;

(7) A worker performing a service has hours set by the person

for whom a service is performed;

(8) A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work;

(9)(A) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.

(B) A person for whom a service is performed has control over where the work takes place if the person has the right to:

(i) Compel the worker to travel a designated route;

(ii) Compel the worker to canvass a territory within a certain time; or

(iii) Require that the work be done at a specific place, especially if the work could be performed elsewhere;

(10) A worker is required to perform services in the order or sequence set by the person for whom a service is performed or the person for whom a service is performed retains the right to set the order or sequence;

(11) A worker is required to submit regular oral or written reports to the person for whom a service is performed;

(12) A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job;

(13) A person for whom a service is performed pays the worker's business or traveling expenses;

(14) A person for whom a service is performed provides significant tools and materials to the worker performing services;

(15) A worker invests in the facilities used in performing the services;

(16) A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee;

(17) A worker performs more than de minimis services for more than one (1) person or firm at the same time, unless the persons or firms are part of the same service arrangement;

(18) A worker makes his or her services available to the general public on a regular and consistent basis;

(19) A person for whom a service is performed retains the right to discharge the worker; and

(20) A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability.

SECTION 2. Arkansas Code Title 11, Chapter 4, Subchapter 1, is amended to add an additional section to read as follows:

11-4-103. Employment status.

For purposes of this chapter, employment status as an employee or independent contractor is determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq.

SECTION 3. Arkansas Code § 11-4-607 is amended to read as follows:

11-4-607. Definitions for §§ 11-4-608 – 11-4-612.

As used in §§ 11-4-608 – 11-4-612, unless the context otherwise requires:

(1)(A) ~~“Employees” shall mean~~ “Employee” means any person employed for hire an individual who performs services for an employer for wages in any a lawful business, industry, trade, profession, or enterprise, and the individual’s employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq.

(B) ~~However, it “Employee” shall~~ does not include persons a person engaged in domestic service in the home of the employer; in agricultural service, or in temporary or seasonal employment; employees an employee of any social club, fraternal, charitable, educational, religious, scientific, or literary association, no part of the net earnings of which inures to the benefit of any private individual;

(2) ~~“Employer” shall include any~~ means a person, natural or artificial, acting in the interest of an employer directly or indirectly; and

(3) ~~“Employment” means any~~ employment of an employee under contract of hire, expressed or implied, written or oral.

SECTION 4. Arkansas Code § 11-9-102(9)(A), concerning the definition of "employee" for purposes of the workers' compensation law resulting from Initiated Act 4 of 1948, is amended to read as follows:

(9)(A) "Employee" means ~~any person~~ an individual, including a minor, whether lawfully or unlawfully employed in the service of an employer under ~~any a~~ a contract of hire or apprenticeship, written or oral, expressed or implied, and the individual's employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq, ~~but excluding one whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer and excluding one who is required to perform work for a municipality or county or the state or federal government upon having been convicted of a criminal offense or while incarcerated.~~

SECTION 5. Arkansas Code § 11-9-102(9)(B), concerning the definition of "employee" for purposes of the workers' compensation law resulting from Initiated Act 4 of 1948, is amended to read as follows:

(B) The term "employee" shall not include:

(i) any An individual who is both a licensee as defined in § 17-42-103(7) and a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder;

(ii) An individual whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer; or

(iii) An individual who is required to perform work for a municipality, county, state, or the United States Government upon having been convicted of a criminal offense or while incarcerated;

SECTION 6. Arkansas Code § 11-9-103, concerning applicability of the Workers' Compensation Law resulting from Initiated Act 4 of 1948, is amended to add an additional subdivision to read as follows:

(d) For purposes of this chapter, employment status as an employee or independent contractor is determined by consideration of the twenty-factor

test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq.

SECTION 7. Arkansas Code § 11-10-210(a)(1)(C), concerning the definition of "employment" within the Department of Workforce Services Law, is repealed.

~~(C) Any individual other than an individual who is an employee under subdivision (a)(1)(A) or (B) of this section who performs services for remuneration for any person:~~

~~(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry-cleaning services, for his or her principal; or~~

~~(ii) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;~~

~~(iii) Provided that for purposes of this subdivision (a)(1)(C), the term "employment" shall include services described in subdivisions (a)(1)(C)(i) and (ii) of this section only if:~~

~~(a) The contract of service contemplates that substantially all of the services are to be performed personally by the individual;~~

~~(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and~~

~~(c) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed;~~

SECTION 8. Arkansas Code § 11-10-210(e), concerning the definition of "employment" within the Department of Workforce Services Law, is amended to read as follows:

(e) Service performed by an individual for an employer for wages shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the director that:

(1) ~~The individual has been and will continue to be free from control and direction in connection with the performance of the service, both under his or her contract for the performance of service and in fact; and~~

(2)(A) ~~The service is performed either outside the usual course of the business for which the service is performed or is performed outside all the places of business of the enterprise for which the service is performed; or~~

(B) ~~The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed in a lawful business, industry, trade, profession, or enterprise, and the individual's employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq. is deemed to be employment under this chapter.~~