

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1850

5 By: Representative McCollum
6 By: Senator Hester
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE EMPOWER INDEPENDENT
10 CONTRACTORS ACT OF 2019; TO AMEND PORTIONS OF THE LAW
11 RESULTING FROM INITIATED ACT 4 OF 1948; TO AMEND THE
12 LAW REGARDING DEFINITIONS OF "EMPLOYEE",
13 "EMPLOYMENT", AND "EMPLOYMENT STATUS" IN TITLE 11;
14 AND FOR OTHER PURPOSES.
15

Subtitle

16
17
18 TO ESTABLISH THE EMPOWER INDEPENDENT
19 CONTRACTORS ACT OF 2019; TO AMEND
20 PORTIONS OF THE LAW IMPACTING INITIATED
21 ACT 4 OF 1948; AND TO AMEND DEFINITIONS
22 OF "EMPLOYEE", "EMPLOYMENT", AND
23 "EMPLOYMENT STATUS" WITHIN TITLE 11.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

30 Subchapter 1 – Empower Independent Contractors Act of 2019

31
32 11-1-101. Title.

33 This subchapter shall be known and may be cited as the "Empower
34 Independent Contractors Act of 2019".
35

36 11-1-102. Purpose.



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

4
5 11-1-103. Definition.

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

10
11 11-1-104. Determination of employment status.

12 For purposes of this title, an employer or agency charged with
13 determining the employment status of an individual shall use the twenty-
14 factor test enumerated by the Internal Revenue Service in Rev. Rul. 87-41,
15 1987-1 C.B. 296, in making its determination and shall consider whether:

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

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

21 (A) Working with an experienced employee;

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

24 (C) Attending meetings; or

25 (D) Other training methods;

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

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

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

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

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

1 for whom a service is performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
 9 SECTION 2. Arkansas Code Title 11, Chapter 4, Subchapter 1, is amended
 10 to add an additional section to read as follows:

11 11-4-103. Employment status.

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

16
 17 SECTION 3. Arkansas Code § 11-4-607 is amended to read as follows:

18 11-4-607. Definitions for §§ 11-4-608 – 11-4-612.

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

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

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

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

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

1
2 SECTION 4. Arkansas Code § 11-9-102(9)(A), concerning the definition
3 of "employee" for purposes of the workers' compensation law resulting from
4 Initiated Act 4 of 1948, is amended to read as follows:

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

16
17 SECTION 5. Arkansas Code § 11-9-102(9)(B), concerning the definition
18 of "employee" for purposes of the workers' compensation law resulting from
19 Initiated Act 4 of 1948, is amended to read as follows:

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

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

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

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

31
32 SECTION 6. Arkansas Code § 11-9-103, concerning applicability of the
33 Workers' Compensation Law resulting from Initiated Act 4 of 1948, is amended
34 to add an additional subdivision to read as follows:

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

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

3
 4 SECTION 7. Arkansas Code § 11-10-210(a)(1)(C), concerning the
 5 definition of "employment" within the Department of Workforce Services Law,
 6 is repealed.

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

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

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

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

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

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

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

33
 34 SECTION 8. Arkansas Code § 11-10-210(e), concerning the definition of
 35 "employment" within the Department of Workforce Services Law, is amended to
 36 read as follows:

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

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

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

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

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36