

AMENDMENTS TO LB 1016

Introduced by Business and Labor.

1           1. Strike the original sections and insert the following  
2 sections:

3           Section 1. Sections 1 to 10 of this act shall be known  
4 and may be cited as the Contractor Employee Classification and  
5 Public Contract Duty Act.

6           Sec. 2. For purposes of the Contractor Employee  
7 Classification and Public Contract Duty Act:

8           (1) Construction has the same meaning as in section  
9 48-2103;

10          (2) Contractor means a sole proprietor, partnership,  
11 firm, corporation, limited liability company, association, or other  
12 legal form engaged in the business of construction and includes a  
13 general contractor or subcontractor;

14          (3) Interested party means a person with an interest in  
15 compliance with the act, including an employee, the Department of  
16 Labor, or the Department of Revenue; and

17          (4) Performing services means the performance of  
18 construction labor for remuneration.

19          Sec. 3. (1) An individual performing services is an  
20 employee of a contractor unless the following are true, in which  
21 case the individual is an independent contractor:

22          (a) The individual has been and will continue to be free  
23 from control or direction over the performance of the service, both

1 under the contract and in fact;

2 (b) The individual is engaged in an independently  
3 established trade, occupation, profession, or business;

4 (c) The individual makes performance of the service  
5 available to the general public;

6 (d) When appropriate, the individual furnishes the tools  
7 and equipment necessary to provide service; and

8 (e) The contractor does not represent the individual as  
9 an employee to customers.

10 (2) An individual performing services is presumed to be  
11 an independent contractor if:

12 (a) The individual has registered as a contractor  
13 pursuant to the Contractor Registration Act at least six months  
14 prior to commencing construction work for the contractor;

15 (b) The individual has been assigned a combined tax rate  
16 pursuant to subdivision (4) of section 48-649 or the employees of  
17 the individual are exempted from unemployment insurance coverage  
18 pursuant to subdivision (6) of section 48-604; and

19 (c) The individual is listed on the data base established  
20 by the Department of Revenue under subsection (3) of section  
21 77-2753 as found in AM2244 to LB 1001 (2008).

22 (3) The Department of Revenue shall establish and operate  
23 a hotline for contractors to call to confirm compliance under  
24 subsection (2) of this section.

25 Sec. 4. It is a violation of the Contractor Employee  
26 Classification and Public Contract Duty Act for a contractor to  
27 designate an individual as an independent contractor who would be

1 properly classified as an employee under section 3 of this act.

2           Sec. 5. In addition to any other remedies available  
3 to the Department of Labor and the Department of Revenue, an  
4 interested party aggrieved by a violation of the Contractor  
5 Employee Classification and Public Contract Duty Act may bring  
6 an action in the district court in the county where an alleged  
7 violation occurred. All interested parties shall be joined in such  
8 action and shall have the right to be represented by counsel  
9 of their own choosing. The cause of action provided for in this  
10 section is available for the following:

11           (1) The amount of combined tax, with interest, that would  
12 have been paid by the contractor under the Employment Security  
13 Law, based upon the contractor's combined tax rate at the time  
14 of employment, if the individual working for such contractor would  
15 have been properly classified as an employee under section 3 of  
16 this act;

17           (2) The amount of state income tax that would have been  
18 withheld by the contractor, based upon the rates at the time of  
19 employment, if the individual working for the contractor would have  
20 been properly classified as an employee under section 3 of this  
21 act;

22           (3) The difference in the compensation paid to the  
23 individual by the contractor as compared to the average prevailing  
24 rate of compensation for like work, as determined by the Department  
25 of Labor, during the time of employment;

26           (4) In the case of unlawful retaliation, all legal and  
27 equitable relief as may be appropriate; and

1           (5) Attorney's fees and costs.  
2           Amounts recovered by settlement or judgment shall be  
3 equitably divided as agreed upon by the interested parties or, in  
4 the absence of an agreement, as determined by the district court  
5 where the action was pending or might have been brought.

6           Sec. 6. It is a violation of the Contractor Employee  
7 Classification and Public Contract Duty Act for a contractor, or  
8 an agent of a contractor, to retaliate through discharge or in  
9 any other manner against an individual for exercising any right  
10 granted under the act. Rights granted under the act include making  
11 a complaint to the contractor or a governmental agency, bringing an  
12 action under the act, or participating in an investigation of an  
13 alleged violation of the act.

14           Sec. 7. Every contractor shall post in a conspicuous  
15 place at the job site in English and Spanish the following notice:

16           (1) Every individual working for a contractor has the  
17 right to be properly classified by the contractor as an employee  
18 rather than an independent contractor if the individual does not  
19 meet the requirements of an independent contractor under the state  
20 law known as the Contractor Employee Classification and Public  
21 Contract Duty Act;

22           (2) If you as an individual working for a contractor have  
23 been improperly classified, you may bring a lawsuit against the  
24 contractor under the state law known as the Contractor Employee  
25 Classification and Public Contract Duty Act. Your lawsuit may  
26 include claims for:

27           (a) The amount of combined tax, with interest, that

1 should have been paid by the contractor under the Employment  
2 Security Law as provided in such state law;

3 (b) The amount of state income tax that should have been  
4 withheld by the contractor as provided in such state law;

5 (c) The difference in the compensation paid to you as  
6 compared to the average prevailing rate of compensation for like  
7 work;

8 (d) In the case of unlawful retaliation by the contractor  
9 against you, all legal and equitable relief as may be appropriate;  
10 and

11 (e) Your expenses for attorney's fees and court and other  
12 costs relating to the lawsuit;

13 (3) It is a violation of the state law known as the  
14 Contractor Employee Classification and Public Contract Duty Act for  
15 a contractor, or an agent of the contractor, to retaliate through  
16 discharge or in any other manner against you for exercising any  
17 right granted under the act. Rights granted under such state law  
18 include making a complaint to the contractor or a governmental  
19 agency, bringing an action under the act, or participating in an  
20 investigation of an alleged violation of such state law; and

21 (4) If you believe you have not been properly classified  
22 as an employee by the contractor you work for, contact an attorney,  
23 the Department of Labor, or the Department of Revenue.

24 Sec. 8. The state or any political subdivision entering  
25 into a contract for construction shall require that each contractor  
26 who performs construction services pursuant to the contract  
27 submit an affidavit attesting that each individual performing

1 services for such contractor is properly classified under the  
2 Contractor Employee Classification and Public Contract Duty Act,  
3 such contractor has a completed federal I-9 immigration form on  
4 file for each individual performing services, and such contractor  
5 has no reasonable basis to believe that such individual is an  
6 undocumented worker.

7           Sec. 9. Any contractor who knowingly provides a false  
8 affidavit under section 8 of this act to the state or a political  
9 subdivision shall be subject to the penalties for perjury and upon  
10 a second or subsequent violation shall not be permitted to contract  
11 with the state or any political subdivision for a period of three  
12 years after the date of discovery of the falsehood.

13           Sec. 10. The Contractor Employee Classification and  
14 Public Contract Duty Act shall not be construed to affect or  
15 apply to a common-law or statutory action providing for recovery in  
16 tort and shall not be construed to affect or change the common-law  
17 interpretation of independent contractor status as it relates to  
18 tort liability or a workers' compensation claim.