

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1016

Introduced by Lathrop, 12.

Read first time January 17, 2008

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to adopt the Proper Employee
2 Classification Act.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Proper Employee Classification Act.

3 Sec. 2. For purposes of the Proper Employee
4 Classification Act:

5 (1) Entity means a sole proprietor, partnership, firm,
6 corporation, limited liability company, association, or other legal
7 form authorized to conduct business within the State of Nebraska;

8 (2) Employer means any entity that employs employees
9 under section 3 of this act;

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

13 (4) Performing services means the performance of any
14 labor for remuneration including, but not limited to, construction,
15 transportation, and maintenance.

16 Sec. 3. An individual performing services is an employee
17 of an entity unless the following are true, in which case the
18 individual is an independent contractor:

19 (1) The individual has been and will continue to be free
20 from control or direction over the performance of the service, both
21 under the contract and in fact;

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

24 (3) The individual makes performance of the service
25 available to the general public;

1 (4) When appropriate, the individual furnishes the tools
2 and equipment necessary to provide service; and

3 (5) The entity does not represent the individual as an
4 employee to customers.

5 Sec. 4. It is a violation of the Proper Employee
6 Classification Act for an entity to designate an individual as
7 an employee who is an independent contractor under section 3 of
8 this act.

9 Sec. 5. In addition to any other remedies available
10 to the Department of Labor and the Department of Revenue, an
11 interested party aggrieved by a violation of the Proper Employee
12 Classification Act may bring an action in the district court in
13 the county where an alleged violation occurred. Actions may be
14 brought by one or more persons for and on behalf of themselves and
15 other persons similarly situated. All interested parties shall be
16 joined in such action and shall have the right to be represented by
17 counsel of their own choosing. The cause of action provided for in
18 this section is available for the following:

19 (1) The amount of combined tax, with interest, that would
20 have been paid by the employer under the Employment Security Law if
21 the employee or employees would have been properly classified based
22 upon the employer's combined tax rate at the time of employment;

23 (2) The amount of state income tax that would have been
24 withheld by the employer, based upon the rates at the time of
25 employment;

1 (3) The difference in the compensation paid to the
2 employee or employees as compared to the average prevailing rate
3 of compensation for like work, as determined by the Department of
4 Labor, during the time of employment or one hundred dollars for
5 every week during which the employee or employees were employed,
6 whichever is greater;

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

9 (5) Attorney's fees and costs.

10 Amounts recovered by settlement or judgment shall be
11 equitably divided as agreed upon by the interested parties or, in
12 the absence of an agreement, as determined by the district court
13 where the action was pending or might have been brought.

14 Sec. 6. It is a violation of the Proper Employee
15 Classification Act for an employer or entity, or an agent of
16 an employer or entity, to retaliate through discharge or in any
17 other manner against any person for exercising any right granted
18 under the act. Rights granted under the act include making a
19 complaint to the employer or a governmental agency, bringing an
20 action under the act, or participating in an investigation of an
21 alleged violation of the act.

22 Sec. 7. Every employer shall post in English and Spanish
23 the following notice in a conspicuous place:

24 (1) Every worker has the right to be properly classified
25 as an employee by his or her employer;

1 (2) If you have been improperly classified you may bring
2 a lawsuit against your employer under the state law known as the
3 Proper Employee Classification Act. Your lawsuit may include claims
4 for:

5 (a) The amount of combined tax, with interest, that would
6 have been paid by the employer under the Employment Security Law if
7 the employee or employees would have been properly classified based
8 upon the employer's combined tax rate at the time of employment;

9 (b) The amount of state income tax that would have been
10 withheld by the employer, based upon the rates at the time of
11 employment;

12 (c) The difference in the compensation paid to the
13 employee or employees as compared to the average prevailing rate
14 of compensation for like work, as determined by the Department of
15 Labor, during the time of employment or one hundred dollars for
16 every week during which the employee or employees were employed,
17 whichever is greater;

18 (d) In the case of unlawful retaliation, all legal and
19 equitable relief as may be appropriate; and

20 (e) Attorney's fees and costs;

21 (3) It is a violation of the Proper Employee
22 Classification Act for an employer or entity, or an agent of an
23 employer or entity, to retaliate through discharge or in any other
24 manner against any person for exercising any right granted under
25 the act. Rights granted under the act include making a complaint to

1 the employer or a governmental agency, bringing an action under the
2 act, or participating in an investigation of an alleged violation
3 of the act; and

4 (4) If you believe you have been improperly classified,
5 contact an attorney, the Department of Labor, or the Department of
6 Revenue.

7 Sec. 8. The state or any political subdivision entering
8 into a contract for labor or services shall require that the
9 contractor and each subcontractor who performs labor or services
10 pursuant to the contract submit an affidavit attesting that
11 each person performing labor or providing services is properly
12 classified under the Proper Employee Classification Act, such
13 contractor or subcontractor has a completed federal I-9 illegal
14 immigration form on file for each person performing labor or
15 providing services, and such contractor or subcontractor has no
16 reasonable basis to believe that any such person is an illegal
17 immigrant.

18 Sec. 9. Any contractor who provides a false affidavit
19 under section 8 of this act to the state or a political subdivision
20 shall be subject to the penalties for perjury and shall not be
21 permitted to contract with the state or any political subdivision
22 for a period of five years after the date of discovery of the
23 falsehood.

24 Sec. 10. The Proper Employee Classification Act shall not
25 be construed to affect or apply to a common-law or statutory action

1 providing for recovery in tort and shall not be construed to affect
2 or change the common-law interpretation of independent contractor
3 status as it relates to tort liability or a workers' compensation
4 claim.