

FINAL BILL REPORT

ESHB 3122

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Synopsis as Enacted

Brief Description: Consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan and McIntire).

House Committee on Commerce & Labor

Senate Committee on Labor, Commerce, Research & Development

Background:

In 2007 the Legislature enacted Senate Bill 5926, which created a Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground construction economy. Over the 2007 interim, the Task Force met six times and adopted recommendations at its final meeting.

One of the issues the Task Force discussed was the determination of independent contractor status. The term "independent contractor" is not defined in law; rather, this concept is embodied in several exception tests to the definition of "worker" in industrial insurance law and "employment" in unemployment compensation law. If a person fulfills the tests, the person is not covered for purposes of workers' compensation and unemployment insurance, and no industrial insurance premiums or unemployment taxes are due. Otherwise, the person is covered, and premiums and taxes are due.

Industrial insurance and unemployment insurance laws share a four-part exception test that applies only to construction. These laws also share a six-part test that applies to all industries, including construction. Persons working under independent contract, the essence of which is personal labor, are covered under industrial insurance. Both sets of laws also contain exceptions for specific industries, and sole proprietors and other business owners are exempt. The analysis also otherwise differs somewhat for unemployment insurance and industrial insurance.

The Task Force recommended that the different definitions of covered worker and employment exceptions be blended into one consistent definition.

Summary:

A new test is established to determine when work is done by independent contract in the construction industry for purposes of unemployment insurance and industrial insurance. The existing construction-specific tests are eliminated. All parts of the following test must be met:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under contract and in fact.
- (2) The service is either outside the usual course of business for which the service is performed, or outside of all the places of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the place of business.
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature, or the individual has a principal place of business that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer.
- (4) On the effective date of the contract, the individual is responsible for filing, under the contract and in fact, a schedule of expenses with the Internal Revenue Service.
- (5) On the effective date of the contract or within a reasonable period after the effective date, the individual has an active and valid certificate of registration with the Department of Revenue (DOR) and an active and valid account with any other state agencies, and has a Unified Business Identifier number.
- (6) On the effective date of the contract, the individual is maintaining a separate set of books or records.
- (7) On the effective date of the contract, the individual has a valid contractor registration or electrical contractor license if the work requires the registration or license.

The new test is similar to the six-part test for all industries. The test differs in that the individual must have a valid contractor registration or electrical contractor license on the effective date of the contract and the accounts the individual must have with the DOR and any other state agencies must be active and valid. In addition, the principal place of business that is eligible for a business deduction must be other than that furnished by the employer.

Votes on Final Passage:

House	92	2
Senate	33	16

Effective: June 12, 2008