
**Labor & Workforce Development
Committee**

HB 2258

Brief Description: Simplifying and providing clarity to independent contractor tests for the construction industry.

Sponsors: Representatives Buys, Manweller and Fagan.

Brief Summary of Bill

- Modifies independent contractor test for the construction industry for purposes of industrial insurance, unemployment insurance, prevailing wage, the Minimum Wage Act, and the Washington Industrial Safety and Health Act.
- Provides that an individual is an independent contractor if the individual has the required accounts for purposes of state taxes, and is registered as a contractor or licensed as an electrical contractor.

Hearing Date: 1/21/14

Staff: Joan Elgee (786-7106).

Background:

Employment standards and benefits generally apply only if an employer-employee relationship exists rather than an independent contractor relationship. Various multi-part tests are used to determine whether an individual is an independent contractor. For the construction industry, a seven-part statutory independent contractor test is applied for purposes of prevailing wage, industrial insurance, and unemployment insurance. For industrial insurance, a threshold question is whether a person under contract bring more than their personal labor to the job. The seven-part test requires that:

- The individual has been and will be free from direction and control, both under the contract and in fact;

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- The individual's services are outside the usual course of business for which the service is performed, or outside all the places of business, or the individual must pay the costs of the principal place of business where the services are performed;
- The individual has an independently established business, or a principal place of business that qualifies for an Internal Revenue Service (IRS) deduction;
- The individual is responsible for filing a schedule of expenses with the IRS;
- The individual has a separate set of books and records that reflect all items of income and expenses;
- The individual is registered as a contractor or licensed as an electrical contractor; and
- The individual has an active and valid registration with the Department of Revenue, has a unified business identifier number, and has any other required state accounts for the payment of taxes.

A common law test, known as the economic dependence test, applies to the Minimum Wage Act, which addresses minimum wage and overtime. The inquiry is whether the worker is economically dependent on the alleged employer or is instead in business for himself or herself. Other employment laws that do not have statutory tests include the Washington Industrial Safety and Health Act.

Summary of Bill:

The independent contractor test for construction for various laws is modified.

An individual is not covered if the individual:

- has an an active and valid registration with the Department of Revenue, has a unified business identifier number, and has any other required state accounts for the payment of taxes; and
- is registered as a contractor or licensed as an electrical contractor.

The test applies to industrial insurance, unemployment insurance, prevailing wage, the Minimum Wage Act and the Washington Industrial Safety and Health Act. The other elements of the existing statutory independent contractor tests in construction in workers' compensation, unemployment insurance, and prevailing wage are eliminated.

Appropriation: None.

Fiscal Note: Requested on January 15, 2014.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.