
**Labor & Workplace Standards
Committee**

SSB 5233

Brief Description: Concerning the independent contractor status of certain interpreters and translators.

Sponsors: Senate Committee on Commerce, Labor & Sports (originally sponsored by Senators Mullet, Palumbo, Rivers and Wilson).

Brief Summary of Substitute Bill

- Excludes individuals performing interpreting or translation services under a written independent contract with a language service company from industrial insurance.
- Excludes services performed by language translators and interpreters provided through agent or brokers from employment for purposes of unemployment compensation.

Hearing Date: 3/21/17

Staff: Joan Elgee (786-7106).

Background:

Persons are generally entitled to receive certain employment-related benefits and employers are obligated to pay the related taxes or premiums if an employer-employee relationship exists rather than an independent contractor relationship. If an employer treats a worker as an independent contractor rather than as an employee, the employer may be liable under the various employment laws. Some types of employments are excluded from coverage.

Industrial Insurance.

Industrial insurance benefits are paid to workers who are injured or develop an occupational disease while working in covered employment. Industrial insurance is maintained either through

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the State Fund administered by the Department of Labor and Industries (L&I) or through self-insurance. Both State Fund and self-insured employers are immune from civil liability for nonintentional workplace injuries and diseases. Most employers and workers are covered for purposes of industrial insurance. Persons working under an independent contract are covered if the essence of the contract is the workers' personal labor. Exclusions include certain domestic servants and taxi drivers who own or lease the vehicle.

A six-part test applies to determine whether an individual is an independent contractor rather than an employee. This test requires that:

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

Elective coverage is available for excluded individuals.

The L&I may audit the books and records of employers to determine compliance with industrial insurance requirements.

Unemployment Insurance.

Unemployment benefits are payable to an unemployed worker who worked at least 680 hours in covered employment in the worker's base year and meets other eligibility requirements. Unemployment contributions (taxes) are paid by employers based, in part, on wages paid in covered employment. Certain employers, including tribes and some nonprofit organizations, reimburse the Employment Security Department for benefits paid to employees and federal law requires certain coverage. Personal services performed for, or for the benefit of, a third party under a contract with a services referral agency is employment for the services referral agency when the agency is responsible for the payment of wages. A "services referral agency" is a business that offers the services of an individual to perform specific tasks for a third party. Most employers and workers are covered for purposes of unemployment insurance. Exclusions include certain domestic works and outsides salespersons.

The six-part independent contractor test for industrial insurance also applies to unemployment insurance. Alternatively, an individual may be found to be an independent contractor under a separate three-part test.

Summary of Bill:

Industrial Insurance.

Any individual performing interpreting or translation services for remuneration under an independent contract with a language service company is not covered under industrial insurance. An interpreter or translator may elect coverage.

A language service company is an entity that is engaged in the business of: offering the services of one or more individuals to perform professional interpreting or translation services for a third party; providing associated billing and fee collection services; and providing background or reference information required to facilitate delivery of the services. The interpreter or translator must perform the services pursuant to a written independent contract and the services must be performed according to the provider's own means and methods.

The exclusion does not apply to individuals performing interpreting or translation services under an employment agreement.

A language service company is not exempt from L&I audits.

Unemployment Insurance.

Employment, for unemployment compensation purposes, does not include services performed by language translators or interpreters that are provided for others through an agent or broker. Services for reimburseable employers are excluded.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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