



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0663/P6
EKL/MIM/ARG/MED:cde

DOA:.....Kirschbaum, BB0196 - Employee misclassification

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Outreach and education regarding employee misclassification

The bill directs the commissioner of insurance to conduct, on at least an annual basis, outreach and education to insurers and other persons regulated by the state insurance laws on how to identify the misclassification of employees and report suspected misclassifications to the appropriate federal and state agencies.

EMPLOYMENT

WORKER CLASSIFICATION

Worker classification notice and posting

The bill requires DWD to design and make available to employers a notice regarding worker classification laws, requirements for employers and employees, and penalties for noncompliance. Under the bill, all employers in this state must post the notice in a conspicuous place where notices to employees are customarily posted. Finally, the bill provides a penalty of not more than \$100 for an employer that does not post the notice as required.

Internet site for worker classification laws

Under the bill, DWD must establish and maintain on the department's Internet site information regarding worker classification laws, requirements for employers

and employees, penalties for noncompliance, and contact information at each state agency that administers worker classification laws.

Unemployment insurance; worker misclassification penalties

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The bill removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The bill also removes the limitations on the types of employers that the penalties apply to, allowing them to be assessed against any type of employer that violates the above prohibitions.

Worker's compensation; penalties for uninsured employers

Under current law, DWD is required to assess an administrative penalty against an employer who requires an employee to pay for any part of worker's compensation insurance or who fails to provide mandatory worker's compensation insurance coverage. If the employer violates those requirements, for the first 10 days, the penalty under current law is not less than \$100 and not more than \$1,000 for such a violation. If the employer violates those requirements for more than 10 days, the penalty under current law is not less than \$10 and not more than \$100 for each day of such a violation.

The bill provides that the penalty for violations occurring after the second such violation is \$3,000 per violation, or three times the amount of the insurance premium that would have been payable, whichever is greater. The bill also provides that the penalty for violations occurring after the third such violation is \$4,000 per violation, or four times the amount of the insurance premium that would have been payable, whichever is greater.

Also under current law, if an employer who is required to provide worker's compensation insurance coverage provides false information about the coverage to his or her employees or contractors who request information about the coverage, or who fails to notify a person who contracts with the employer that the coverage has been canceled in relation to the contract, DWD is required to assess a penalty of not less than \$100 and not more than \$1,000 for each such violation.

The bill provides that the penalty for violations occurring after the third such violation is \$3,000 per violation, and \$4,000 for violations occurring after the fourth such violation.

STATE GOVERNMENT***Worker misclassification outreach***

The bill requires DOA to direct state agencies, constitutional offices, departments, independent agencies, and societies, associations, and certain other agencies of state government for which appropriations are made by law, to provide educational outreach regarding worker misclassification to employers, workers, and organizations that serve vulnerable populations.

BUILDINGS AND SAFETY***Construction contractor registration***

The bill requires most persons who hold themselves out or act as a construction contractor to be registered by DSPS. DSPS may directly assess a forfeiture by issuing an order against any person who fails to register as required under the bill. The registration requirement does not apply to a person who engages in construction on his or her own property, to a state agency or local governmental unit, or to a person who engages in construction in the course of his or her employment by a state agency or local governmental unit.

COMMERCE AND ECONOMIC DEVELOPMENT**COMMERCE*****Worker misclassification information***

The bill requires DFI to provide informational materials and resources on worker misclassification to each person who files with DFI documents forming a business corporation, nonstock corporation, limited liability company, limited liability partnership, or limited partnership.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.40 (24) of the statutes is created to read:

16.40 (24) WORKER MISCLASSIFICATION OUTREACH. Direct all departments to provide targeted educational outreach regarding worker misclassification in English, Spanish, and other languages spoken by a significant number of individuals in this state, to employers, workers, and organizations that serve vulnerable populations, including individuals with limited English proficiency. The outreach

shall emphasize the appropriate departments to contact and the rights of individuals to remain anonymous when reporting worker misclassification.

SECTION 2. 101.147 of the statutes is created to read:

101.147 Construction contractor registration. (1) (a) Except as provided in par. (b), no person may hold himself or herself out or act as a construction contractor unless that person is registered as a construction contractor by the department.

(b) The registration requirement under par. (a) does not apply to any of the following:

1. A person who engages in construction on property owned or leased by that person.
2. A state agency or local governmental unit.
3. A person who engages in construction in the course of his or her employment by a state agency or local governmental unit.

(2) An application for a registration under this section shall require the applicant to submit all of the following:

(a) The applicant's name, contact information, and physical address for the business principal.

(b) If the applicant is a corporation, limited liability company, limited partnership, or limited liability partnership and is not organized under ch. 178, 179, 180, 181, or 183, evidence that the applicant is registered, or has obtained a certificate of authority or registration, to transact business in this state under s. 178.1003, 179.87, 180.1503, 181.1503, or 183.1004, as applicable.

(c) Evidence of compliance with the requirements under ss. 108.17 to 108.205.

(d) Evidence of compliance with s. 102.28 (2).

(e) An acknowledgment of worker classification laws and penalties to ensure that registered construction contractors are aware of their obligations.

(3) The department may directly assess a forfeiture by issuing an order against any person who violates this section.

(4) The department shall, with the advice of the department of workforce development, promulgate rules to administer and enforce this section.

SECTION 3. 101.19 (1g) (m) of the statutes is created to read:

101.19 (1g) (m) Registering construction contractors under s. 101.147.

SECTION 4. 102.85 (1) (a) of the statutes is amended to read:

102.85 (1) (a) ~~An~~ For each act occurring before the date of the first determination of a violation of this subsection, an employer who fails to comply with s. 102.16 (3) or 102.28 (2) for less than 11 days shall forfeit not less than \$100 ~~nor~~ and not more than \$1,000.

SECTION 5. 102.85 (1) (b) of the statutes is amended to read:

102.85 (1) (b) ~~An~~ For each act occurring after the date of the first or second determination of a violation of this subsection, an employer who fails to comply with s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than \$10 ~~nor~~ and not more than \$100 for each day on which the employer fails to comply with s. 102.16 (3) or 102.28 (2).

SECTION 6. 102.85 (1) (c) of the statutes is created to read:

102.85 (1) (c) For each act occurring after the date of the 3rd determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$3,000 for each act, or 3 times the amount of the premium that would have been payable, whichever is greater.

SECTION 7. 102.85 (1) (d) of the statutes is created to read:

102.85 (1) (d) For each act occurring after the date of the 4th determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$4,000 for each act, or 4 times the amount of the premium that would have been payable, whichever is greater.

SECTION 8. 102.85 (2) (intro.) of the statutes is amended to read:

102.85 (2) (intro.) ~~An~~ For each act occurring after the date of the first determination under this subsection, an employer who is required to provide worker's compensation insurance coverage under this chapter shall forfeit not less than \$100 ~~nor~~ and not more than \$1,000 if the employer does any of the following:

SECTION 9. 102.85 (2j) of the statutes is created to read:

102.85 (2j) For each act occurring after the date of the 3rd determination under sub. (2), an employer who is required to provide worker's compensation insurance coverage under this chapter shall forfeit \$3,000 per violation.

SECTION 10. 102.85 (2k) of the statutes is created to read:

102.85 (2k) For each act occurring after the date of the 4th determination under sub. (2), an employer who is required to provide worker's compensation insurance coverage under this chapter shall forfeit \$4,000 per violation.

SECTION 11. 103.005 (4m) of the statutes is created to read:

103.005 (4m) (a) The department shall design and make available to employers a notice regarding worker classification laws, requirements for employers and employees, and penalties for noncompliance.

(b) All employers shall post, in one or more conspicuous places where notices to employees are customarily posted, the notice designed by the department under par. (a). Any employer who violates this paragraph shall forfeit not more than \$100 for each offense.

(c) The department shall establish and maintain on the department's Internet site information regarding worker classification laws, requirements for employers and employees, penalties for noncompliance, and contact information at each state agency that administers worker classification laws.

SECTION 12. 108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

108.221 (1) (a) (intro.) Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$500 for each employee who is misclassified, but not to exceed \$7,500 per incident.

SECTION 13. 108.221 (1) (a) 2. of the statutes is created to read:

108.221 (1) (a) 2. For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each employee who is misclassified.

SECTION 14. 108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

108.221 (2) (intro.) Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, through coercion,

requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

(a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year.

SECTION 15. 108.221 (2) (b) of the statutes is created to read:

108.221 **(2)** (b) For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$2,000 for each individual so coerced.

SECTION 16. 182.01 (7) of the statutes is created to read:

182.01 **(7)** INFORMATION TO BE PROVIDED WITH BUSINESS FORMATION FILINGS. The department shall provide informational materials and resources on worker misclassification to each person who files with the department any of the following:

- (a) Articles of incorporation under s. 180.0202 or 181.0202.
- (b) Articles of organization under s. 183.0202.
- (c) A statement of qualification under s. 178.0901.
- (d) A certificate of limited partnership under s. 179.11.

SECTION 17. 601.41 (12) of the statutes is created to read:

601.41 **(12)** EMPLOYEE MISCLASSIFICATION OUTREACH AND EDUCATION. The commissioner shall, on at least an annual basis, conduct outreach and education to persons subject to regulation under chs. 600 to 655 on how to identify the misclassification of employees as independent contractors and how to report suspected misclassifications to the appropriate federal and state agencies.

(END)