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H.337

Introduced by Representative Mrowicki of Putney
Referred to Committee on
Date:
Subject: Labor; workers' compensation; independent contractors
Statement of purpose of bill as introduced: This bill proposes to amend
definitions related to independent contractors for purposes of workers'
compensation.

An act relating to the classification of independent contractors

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

~~Unless the context otherwise requires, words and phrases used in this
chapter shall be construed as follows~~ As used in this chapter:

* * *

(3) "Employer" includes any body of persons, corporate or
unincorporated, public or private, and the legal representative of a deceased
employer, and includes the owner or lessee of premises or other person who is
virtually the proprietor or operator of the business there carried on, but who, by
reason of there being an independent contractor or for any other reason, is not

1 the direct employer of the workers there employed. If the employer is insured,
2 the term “employer” includes the employer’s insurer so far as applicable. A
3 person is not deemed to be an “employer” for the purposes of this chapter as
4 the result of entering into a contract for services or labor with ~~an individual~~
5 a sole proprietor or partner owner who has knowingly and voluntarily waived
6 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an
7 individual who is a corporate officer or L.L.C. member or manager that has
8 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this
9 section and who meets the criteria set forth in that subdivision.

10 * * *

11 (14) “Worker” and “employee” ~~means an individual~~ mean a person who
12 has entered into the employment of, or works under a contract of service or
13 apprenticeship with, an employer. Any reference to a worker who has died as
14 the result of a work injury shall include a reference to the worker’s dependents,
15 and any reference to a worker who is a minor or incompetent shall include a
16 reference to the minor’s committee, guardian, or next friend. ~~The term~~
17 ~~“worker” or “employee” does not include~~ A person who performs services for
18 compensation is presumed to be an employee unless the person is one of the
19 following:

20 * * *

1 (F)(i) ~~The~~ A sole proprietor or partner owner ~~or partner owners~~ of an
2 unincorporated business provided the following conditions are met:

3 ~~(i)(I)(aa)~~ The individual or partner owner is an independent
4 contractor who performs work that is distinct and separate from that of the
5 person with whom the individual or partner owner contracts; or

6 (bb) the individual or partner owner is an independent
7 contractor and is either actively registered as a business with the Vermont
8 Secretary of State or actively registered as a business in the state or country of
9 domicile.

10 ~~(ii) The individual controls the means and manner of the work~~
11 ~~performed.~~

12 ~~(iii) The individual holds him or herself out as in business for~~
13 ~~him or herself.~~

14 ~~(iv) The individual holds him or herself out for work for the~~
15 ~~general public and does not perform work exclusively for or with another~~
16 ~~person.~~

17 ~~(v) The individual is not treated as an employee for purposes of~~
18 ~~income or employment taxation with regard to the work performed.~~

19 ~~(vi)(II)~~ The services are performed pursuant to a written
20 agreement or contract between the individual and another person the person
21 who is providing compensation for the services, and the written agreement or

1 contract explicitly states that the individual or partner owner is not considered
2 to be an employee under this chapter, is working independently, has no
3 employees, and has not contracted with other independent contractors. The
4 written contract or agreement shall also include information regarding the right
5 of the individual or partner owner to purchase workers' compensation
6 insurance coverage ~~and the individual's election not to purchase that coverage.~~
7 However, if the individual or partner owner who is party to the agreement or
8 contract under this subdivision is found to have employees, those employees
9 may file a claim for benefits under this chapter against either or both parties to
10 the agreement.

11 (ii)(I) An individual or partner owner that meets the conditions of
12 subdivision (i) of this subdivision (14)(F) may elect to file with the
13 Commissioner a notice to waive the right to make a claim for workers'
14 compensation against the person with whom the individual or partner owner
15 contracts.

16 (II) If, after filing a notice under subdivision (I) of this
17 subdivision (14)(F)(ii), the individual or partner owner suffers a personal
18 injury arising out of and in the course of the individual or partner owner's
19 employment, the individual or partner owner may bring an action to recover
20 damages for personal injury against the person who is providing compensation
21 for the services and, in such action, the person who is providing compensation

1 for the services shall have all of the defenses available in a personal injury
2 claim. However, this election shall not prevent any other individual, other than
3 the individual or partner owner excluded pursuant to subdivision (i) of this
4 subdivision (14)(F), who is determined to be an employee of the
5 unincorporated business from claiming workers' compensation benefits under
6 this chapter from the unincorporated business or from a statutory employer.

7 (iii) An individual or partner owner that makes an election under
8 subdivision (ii) of this subdivision (14)(F) shall collect and maintain
9 documentation that any other person hired to perform services for the sole
10 proprietor or partner owner's unincorporated business has workers'
11 compensation coverage or is otherwise in compliance with the provisions of
12 this chapter.

13 * * *

14 (H) With the approval of the Commissioner, a corporation or a
15 limited liability company (L.L.C.) may elect to file exclusions from the
16 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up
17 to four corporate executive officers or four L.L.C. managers or members from
18 coverage requirements under this chapter. If all officers of the corporation or
19 all managers or members of an L.L.C. make such election, receive approval,
20 and the business has no employees, the corporation or L.L.C. shall not be
21 required to purchase workers' compensation coverage. ~~If after election, the~~

1 ~~officer, manager, or member experiences a personal injury and files a claim~~
2 ~~under this chapter, the employer shall have all the defenses available in a~~
3 ~~personal injury claim. However, this election shall not prevent any other~~
4 ~~individual, other than the individual excluded under this section, found to be an~~
5 ~~employee of the corporation or L.L.C. to recover workers' compensation from~~
6 ~~either the corporation, L.L.C., or the statutory employer.~~

7 (i) A person shall not be deemed to be an "employer" for purposes
8 of this chapter of corporate executive officers or L.L.C. managers or members
9 that are excluded under this subdivision (14)(H) if the following conditions
10 are met:

11 (I) The corporate executive officers or L.L.C. managers or
12 members operate a separate and distinct business that is an independent
13 contractor, is actively registered with the Vermont Secretary of State, and
14 elects to file a corporate officer or L.L.C. member exclusion from the
15 provisions of this chapter.

16 (II) The services are performed pursuant to a written agreement
17 or contract between the corporation or L.L.C. and the person who is providing
18 compensation for the services, and the written agreement or contract explicitly
19 states that the corporate executive officers or L.L.C. managers or members are
20 not considered to be employees under this chapter and are working
21 independently. The written contract or agreement shall also include

1 information regarding the right of the corporation or L.L.C. to purchase
2 workers' compensation insurance coverage and of the corporate executive
3 officers or the L.L.C. managers or members to elect not to exclude themselves
4 from coverage.

5 (ii) If, after making an election under this subdivision (14)(H), a
6 corporate officer or L.L.C. manager or member suffers a personal injury
7 arising out of and in the course of the officer, member, or manager's
8 employment, the officer, member, or manager may bring an action to recover
9 damages for personal injury against the person who is providing compensation
10 for the services and, in such action, the person who is providing compensation
11 for the services shall have all of the defenses available in a personal injury
12 claim. However, this election shall not prevent any other individual, other than
13 the individual excluded pursuant to this subdivision, who is determined to be
14 an employee of the corporation or L.L.C. from claiming workers'
15 compensation benefits under this chapter from the corporation or L.L.C. or
16 from a statutory employer.

17 (iii) A corporation or L.L.C. whose executive officers, members,
18 or managers make an election under this subdivision (14)(H) shall collect and
19 maintain documentation that any other person hired to perform services for the
20 corporation or L.L.C. has workers' compensation coverage or is otherwise in
21 compliance with this chapter.

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(31)(A) “Independent contractor” means a person that is economically independent of the person’s employing unit under the totality of the circumstances based on an assessment of the following factors:

(i) whether the person is free from the direction and control of the employing unit with respect to the means and manner of the services performed, both under the person’s contract of service and in fact;

(ii) whether the person performs work that is an integral part of the employing unit’s business;

(iii) whether the person’s managerial skills affect the person’s opportunity for profit or loss;

(iv) the nature and extent of the relative investments by the person and the employing unit in the resources, assets, or equipment necessary to perform the services contracted for;

(v) whether the work performed requires the person to exercise specialized business skills, judgment, and initiative;

(vi) whether the person holds itself out as in business for itself and competes to offer its services to the general public in the open market; and

(vii) the degree to which the relationship between the person and the employing unit is permanent or indefinite.

1 (B) In considering whether a person is economically independent
2 pursuant to subdivision (A) of this subdivision (31), no single factor in and of
3 itself shall be dispositive.

4 (C) If multiple persons are performing the same work on a project or
5 jobsite, the determination of whether the person is economically independent
6 of the employing unit shall take into account the relationship between the
7 specific services performed by the person and the circumstances of the project
8 or job in relation to which the person is providing services.

9 (D) An independent contractor shall purchase workers' compensation
10 coverage for its employees as provided in this chapter.

11 Sec. 2. EFFECTIVE DATE

12 This act shall take effect on July 1, 2023.