

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 380

By: Bergstrom

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6 AS INTRODUCED

7 An Act relating to independent contractor  
8 classification; creating The Uniform Worker  
9 Classification Act; providing short title; stating  
10 purpose; including and interpreting other provisions  
11 of law; stating criteria to determine independent  
12 contractor; requiring certain classification based on  
13 criteria; construing right of principal to hire  
14 employee; requiring uniform classification of workers  
15 within state; directing political subdivision to use  
16 certain criteria to determine worker classification;  
17 providing for codification; and providing an  
18 effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 720 of Title 40, unless there is  
22 created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as "The Uniform Worker  
24 Classification Act".

25 SECTION 2. NEW LAW A new section of law to be codified  
26 in the Oklahoma Statutes as Section 720.1 of Title 40, unless there  
27 is created a duplication in numbering, reads as follows:

1           The purpose of The Uniform Worker Classification Act is to bring  
2 clarity, certainty and uniformity under the laws of this state to  
3 differentiate employees from independent contractors in employment  
4 and to impose objective and uniform standards for making that  
5 distinction. All laws where the application thereof is contingent  
6 upon the classification of a worker as being an employee are hereby  
7 superseded and interpreted to the extent necessary by this act  
8 including but not limited to any workers' compensation, unemployment  
9 compensation, wage, civil rights and tort claims laws codified in  
10 the statutes of this state.

11           SECTION 3.           NEW LAW           A new section of law to be codified  
12 in the Oklahoma Statutes as Section 720.2 of Title 40, unless there  
13 is created a duplication in numbering, reads as follows:

14           A. Subject only to the provisions of subsection B of this  
15 section, a person shall be classified as an independent contractor  
16 under the laws of this state including, but not limited to, those  
17 laws codified in statute and identified in Section 1 of this act,  
18 if:

19           1. The person signs a written contract with the principal, in  
20 substantial compliance with the terms of this subsection, that  
21 states the principal's intent to retain the services of the person  
22 as an independent contractor and contains acknowledgements that the  
23 person understands that he or she is:

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- a. providing services for the principal as an independent contractor,
- b. not going to be treated as an employee of the principal,
- c. not going to be provided by the principal with either worker's compensation or unemployment compensation benefits,
- d. obligated to pay all applicable federal and state income taxes, if any, on any monies earned pursuant to the contractual relationship, and that the principal will not make any tax withholdings from any payments from the principal, and
- e. responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted for services unless: the expenses are for travel that is not local, the expenses are reimbursed under an express provision of the contract or the supplies or expenses reimbursed are commonly reimbursed under industry practice;

2. The person has either filed, intends to file or is contractually required to file, in regard to the fees earned from the work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment, or provides his or her services through a business entity including, but not limited

1 to, a partnership, limited liability company or corporation or  
2 through a sole proprietorship registered with a DBA as required  
3 under state or local law;

4 3. With the exception of the exercise of control necessary to  
5 ensure compliance with statutory, regulatory, licensing, permitting  
6 or other similar obligations required by a governmental or  
7 regulatory entity, or to protect persons or property or to protect a  
8 franchise brand, the person has the right to control the manner and  
9 means by which the work is to be accomplished, even though he or she  
10 may not have control over the final result of the work. This  
11 provision is satisfied even though the principal may provide  
12 orientation, information, guidance or suggestions about the  
13 principal's products, business, services, customers and operating  
14 systems, and training otherwise required by law;

15 4. The person satisfies three or more of the following  
16 criteria:

- 17 a. except for an agreement with the principal relating to  
18 final completion or final delivery time or schedule,  
19 range of work hours, or the time entertainment is to  
20 be presented if the work contracted for is  
21 entertainment, the person has control over the amount  
22 of time personally spent providing services,  
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- 1           b.    except for services that can only be performed at  
2                    specific locations, the person has control over where  
3                    the services are performed, or  
4           c.    the person is not required to work exclusively for one  
5                    principal unless:  
6                    (1)  a law, regulation or ordinance prohibits the  
7                            person from providing services to more than one  
8                            principal, or  
9                    (2)  a license or permit that the person is required  
10                           to maintain in order to perform the work limits  
11                           the person to working for only one principal at a  
12                           time or requires identification of the principal,  
13                           and  
14           d.    the person is free to exercise independent initiative  
15                    in soliciting others to purchase his or her services,  
16                    and  
17           e.    the person is free to hire employees or to contract  
18                    with assistants, helpers and/or substitutes to perform  
19                    all or some of the work;

20           5.    The person cannot be required to perform additional services  
21 without a new or modified contract;

22           6.    The person obtains a license or other permission from the  
23 principal to utilize any workspace of the principal in order to  
24 perform the work for which the person was engaged;

1           7. The principal has been subject to an employment audit by the  
2 Internal Revenue Service and the IRS has not reclassified the person  
3 to be an employee or has not reclassified the category of workers to  
4 be employees;

5           8. The person is responsible for maintaining and bearing the  
6 costs of any required business licenses, insurance, certifications  
7 or permits required to perform the services; or

8           9. The person meets the standards promulgated by the Internal  
9 Revenue Service (IRS) for an independent contractor or is an  
10 incorporated business entity.

11           B. All workers who do not satisfy the criteria set forth in  
12 subsection A of this section shall be classified as employees. In  
13 addition, nothing contained in subsection A of this section shall  
14 require a principal to classify a worker who meets the criteria  
15 contained therein as an independent contractor; the principal always  
16 being free to hire the worker as an employee.

17           C. The state and its political subdivisions shall determine and  
18 classify independent contractor status uniformly. Each political  
19 subdivision shall utilize the provisions of this section to  
20 determine independent contractor status.

21           SECTION 4. This act shall become effective November 1, 2021.

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