

2013 -- S 0368

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY--
GENERAL PROVISIONS

Introduced By: Senators McCaffrey, Goodwin, Lombardi, Miller, and Gallo

Date Introduced: February 13, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-42-7 and 28-42-8 of the General Laws in Chapter 28-42
2 entitled "Employment Security - General Provisions" are hereby amended to read as follows:

3 ~~28-42-7. Independent contractor and employee distinguished~~ **Employee**
4 **presumption -- Independent contractor exemption.** -- (a) The determination of independent
5 contractor ~~or as opposed to~~ employee status for purposes of chapters 12, 14, 42 -- 44 of this title,
6 chapter 37-13 and title 44 shall be established as follows: shall be the same as those factors used
7 by the Internal Revenue Service in its code and regulations.

8 (1) The term "employee" means any person who has entered into the employment of
9 work under contract of service or apprenticeship with another person or entity. The term
10 "employee" does not include an independent contractor. Any person performing work for or on
11 behalf of another shall be presumed to be an "employee," unless it is demonstrated that the person
12 is an independent contractor as defined below or exempted under section 28-42-8.

13 (2) The term "independent contractor" means a person, firm or corporation who contracts
14 with another to perform a specific task or unit of work; who furnishes and has sole control over
15 any assistants engaged to complete the work; who executes the work in accordance with the
16 independent contractor's own ideas; plans, policies, or according to a plan previously provided by
17 the person or entity for whom the work is performed and who is not subject to the hiring person's
18 or entity's orders relating to the performance of the details of the work.

1 (b) The failure to withhold federal or state income taxes or to pay unemployment
2 compensation contributions or workers' compensation premiums with respect to a person's
3 compensation shall not be considered in making a determination under this section.

4 (c) In making the determination under subsection (a) above, the presumption of employee
5 status may be overcome by application of the remaining factors used by the Internal Revenue
6 Service, with the exception of those excluded under the subsection (b) above.

7 (d) Any person, business, corporation, employer or entity of any kind failing to properly
8 classify a worker as an employee according to this section shall be subject to liability and
9 penalties as provided under chapter 28-14 in addition to any other liability, penalties or relief to
10 which they may be subject under applicable law.

11 **28-42-8. Exemptions from "employment".** -- "Employment" does not include:

12 (1) Domestic service in a private home performed for a person who did not pay cash
13 remuneration of one thousand dollars (\$1,000) or more in any calendar quarter after December
14 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in
15 that domestic service in a private home;

16 (2) Service performed by an individual in the employ of his or her son, daughter, or
17 spouse, and service performed by a child under the age of eighteen (18) in the employ of his or
18 her father or mother;

19 (3) Service performed in the employ of any other state or any of its political
20 subdivisions, the United States government, an instrumentality of any other state or states or their
21 political subdivisions, or of an instrumentality of the United States, except that if the Congress of
22 the United States permits states to require any instrumentalities of the United States to make
23 payments into an unemployment fund under a state unemployment compensation act, then, to the
24 extent permitted by Congress, and from and after the date as of which permission becomes
25 effective, all of the provisions of chapters 42 -- 44 of this title shall be applicable to those
26 instrumentalities and to services performed for those instrumentalities, in the same manner, to the
27 same extent, and on the same terms as to all other employers, employing units, individuals, and
28 services. If this state is not certified by the Secretary of Labor under 26 U.S.C. section 3304 for
29 any year, then the payments required of those instrumentalities with respect to that year shall be
30 deemed to have been erroneously collected within the meaning of section 28-43-12 and shall be
31 refunded by the director from the fund in accordance with section 28-43-12;

32 (4) Service performed:

33 (i) In the employ of:

34 (A) A church or convention or association of churches, or

1 (B) An organization which is operated primarily for religious purposes and which is
2 operated, supervised, controlled, or principally supported by a church or convention or
3 association of churches;

4 (ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of
5 his or her ministry or by a member of a religious order in the exercise of duties required by that
6 order;

7 (iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for
8 individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or
9 providing remunerative work for individuals who, because of their impaired physical or mental
10 capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving
11 that rehabilitation or remunerative work;

12 (iv) As part of an unemployment work relief or work training program assisted or
13 financed in whole or in part by any federal agency or an agency of a state or one of its political
14 subdivisions, by an individual receiving that work relief or work training;

15 (v) In the employ of a hospital by a patient of the hospital; or

16 (vi) By an inmate of a custodial or penal institution;

17 (5) Service with respect to which unemployment compensation is payable under an
18 unemployment compensation system established by an act of Congress. The director is authorized
19 and directed to enter into agreements with the proper agencies under that act of Congress, which
20 agreements shall become effective ten (10) days after their publication as in the manner provided
21 in section 28-42-34 to provide reciprocal treatment to individuals who have, after acquiring
22 potential rights to benefits under chapters 42 -- 44 of this title acquired rights to unemployment
23 compensation under that act of Congress, or who have, after acquiring potential rights to
24 unemployment compensation under that act of Congress, acquired rights to benefits under those
25 chapters;

26 (6) Service covered by an election duly approved by the agency charged with the
27 administration of any other state or federal employment security law in accordance with an
28 arrangement pursuant to section 28-42-58 during the effective period of that election, except as
29 provided in section 28-42-3(15)(i);

30 (7) Services performed by an individual in any calendar quarter on or after January 1,
31 1972 in the employ of any organization exempt from income tax under 26 U.S.C. section
32 501(a)(other than services performed for an organization defined in section 28-42-3(24) or for
33 any organization described in 26 U.S.C. section 401(a) or under 26 U.S.C. section 521) if the
34 remuneration for that service is less than fifty dollars (\$50.00);

1 (8) Service which is occasional, incidental, and occurs irregularly, and is not in the
2 course of the employing unit's trade or business. Service for a corporation shall not be excluded;

3 (9) Service as a golf caddy, except as to service performed solely for a club with respect
4 to which the club alone bears the expense. A golf caddy, except as in this specifically provided
5 subdivision, shall not be construed to be an "employee" as defined in section 28-42-3(14);

6 (10) Notwithstanding any provisions of titles 5 and 27, service performed by an
7 individual as a real estate salesperson if all the service performed by that individual is performed
8 for remuneration solely by way of commission;

9 (11) Notwithstanding any provisions of titles 5 and 27, service performed by an
10 individual as an insurance broker, agent, or subagent if all the service performed by that
11 individual is performed for remuneration solely by way of commission. This exemption shall not
12 apply to service performed as industrial and debit insurance agents;

13 (12) Service performed by an individual who is enrolled at a nonprofit or public
14 educational institution which normally maintains a regular faculty and curriculum and normally
15 has a regular organized body of students in attendance at the place where its educational activities
16 are carried on, as a student in a full-time program, taken for credit at that institution which
17 combine academic instruction with work experience, if that service is an integral part of that
18 program, and that institution has so certified to the employer, except that this subdivision shall
19 not apply to service performed in a program established for or on behalf of an employer or group
20 of employers;

21 (13) Service performed by an individual on a boat engaged in catching fish or other
22 forms of aquatic animal life under an arrangement with the owner or operator of that boat
23 pursuant to which:

24 (i) That individual does not receive any cash remuneration other than a share of the
25 boat's catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale
26 of that catch; and

27 (ii) The operating crew of that boat is normally made up of fewer than ten (10)
28 individuals; ~~and~~

29 (14) Services performed by a member of an AmeriCorp program.

30 (15) Services performed by a newspaper carrier; and

31 (16) Services performed by individuals that sublease space to perform a service for which
32 they do not receive any compensation from their sublessor.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY--
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- 1 This act would clarify the definition of independent contractor by providing a
- 2 presumption that a person is an employee unless certain specific conditions are met.
- 3 This act would take effect upon passage.

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