

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 563**

Introduced by Lathrop, 12.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to labor; to adopt the Contractor Employee
- 2 Classification Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and  
2 may be cited as the Contractor Employee Classification Act.

3           Sec. 2. For purposes of the Contractor Employee  
4 Classification Act:

5           (1) Contractor means a sole proprietor, partnership,  
6 firm, corporation, limited liability company, association, other  
7 legal business form, or any other person or groups of persons  
8 acting directly or indirectly in the interest of an employer in  
9 relation to an employee;

10          (2) Interested party means a person with an interest in  
11 compliance with the act, including an employee, the Department of  
12 Labor, or the Department of Revenue; and

13          (3) Performing services means the performance of any task  
14 related to the business of an employer.

15          Sec. 3. (1) An individual performing services is an  
16 employee of a contractor unless the following are true, in which  
17 case the individual is an independent contractor:

18          (a) The individual has been and will continue to be free  
19 from control or direction over the performance of the service, both  
20 under the contract and in fact;

21          (b) The individual is engaged in an independently  
22 established trade, occupation, profession, or business;

23          (c) The individual makes performance of the service  
24 available to the general public;

25          (d) When appropriate, the individual furnishes the tools

1 and equipment necessary to provide service; and

2 (e) The contractor does not represent the individual as  
3 an employee to customers.

4 (2) An individual performing services is presumed to be  
5 an independent contractor if:

6 (a) The individual has registered as a contractor  
7 pursuant to the Contractor Registration Act at least six months  
8 prior to commencing construction work for the contractor;

9 (b) The individual has been assigned a combined tax rate  
10 pursuant to subdivision (4) of section 48-649 or the employees of  
11 the individual are exempted from unemployment insurance coverage  
12 pursuant to subdivision (6) of section 48-604; and

13 (c) The individual is listed on the data base established  
14 by the Department of Revenue under subsection (3) of section  
15 77-2753.

16 (3) The Department of Revenue shall establish and operate  
17 a hotline for contractors to call to confirm compliance under  
18 subsection (2) of this section.

19 Sec. 4. It is a violation of the Contractor Employee  
20 Classification Act for a contractor to designate an individual as  
21 an independent contractor who would be properly classified as an  
22 employee under section 3 of this act.

23 Sec. 5. In addition to any other remedies available  
24 to the Department of Labor and the Department of Revenue,  
25 an interested party aggrieved by a violation of the Contractor

1 Employee Classification Act may bring an action in the district  
2 court in the county where an alleged violation occurred. All  
3 interested parties shall be joined in such action and shall have  
4 the right to be represented by counsel of their own choosing. The  
5 cause of action provided for in this section is available for the  
6 following:

7 (1) The amount of combined tax, with interest, that would  
8 have been paid by the contractor under the Employment Security  
9 Law, based upon the contractor's combined tax rate at the time  
10 of employment, if the individual working for such contractor would  
11 have been properly classified as an employee under section 3 of  
12 this act;

13 (2) The amount of state income tax that would have been  
14 withheld by the contractor, based upon the rates at the time of  
15 employment, if the individual working for the contractor would have  
16 been properly classified as an employee under section 3 of this  
17 act;

18 (3) The difference in the compensation paid to the  
19 individual by the contractor as compared to the average prevailing  
20 rate of compensation for like work, as determined by the Department  
21 of Labor, during the time of employment;

22 (4) In the case of unlawful retaliation, all legal and  
23 equitable relief as may be appropriate; and

24 (5) Attorney's fees and costs.

25 Amounts recovered by settlement or judgment shall be

1 equitably divided as agreed upon by the interested parties or, in  
2 the absence of an agreement, as determined by the district court  
3 where the action was pending or might have been brought.

4           Sec. 6. It is a violation of the Contractor Employee  
5 Classification Act for a contractor, or an agent of a contractor,  
6 to retaliate through discharge or in any other manner against an  
7 individual for exercising any right granted under the act. Rights  
8 granted under the act include making a complaint to the contractor  
9 or a governmental agency, bringing an action under the act, or  
10 participating in an investigation of an alleged violation of the  
11 act.

12           Sec. 7. Every contractor shall post in a conspicuous  
13 place at the job site in English and Spanish the following notice:

14           (1) Every individual working for a contractor has the  
15 right to be properly classified by the contractor as an employee  
16 rather than an independent contractor if the individual does not  
17 meet the requirements of an independent contractor under the state  
18 law known as the Contractor Employee Classification Act;

19           (2) If you as an individual working for a contractor have  
20 been improperly classified, you may bring a lawsuit against the  
21 contractor under the state law known as the Contractor Employee  
22 Classification Act. Your lawsuit may include claims for:

23           (a) The amount of combined tax, with interest, that  
24 should have been paid by the contractor under the Employment  
25 Security Law as provided in such state law;

1           (b) The amount of state income tax that should have been  
2 withheld by the contractor as provided in such state law;

3           (c) The difference in the compensation paid to you as  
4 compared to the average prevailing rate of compensation for like  
5 work;

6           (d) In the case of unlawful retaliation by the contractor  
7 against you, all legal and equitable relief as may be appropriate;  
8 and

9           (e) Your expenses for attorney's fees and court and other  
10 costs relating to the lawsuit;

11           (3) It is a violation of the state law known as the  
12 Contractor Employee Classification Act for a contractor, or an  
13 agent of the contractor, to retaliate through discharge or in any  
14 other manner against you for exercising any right granted under the  
15 act. Rights granted under such state law include making a complaint  
16 to the contractor or a governmental agency, bringing an action  
17 under the act, or participating in an investigation of an alleged  
18 violation of such state law; and

19           (4) If you believe you have not been properly classified  
20 as an employee by the contractor you work for, contact an attorney,  
21 the Department of Labor, or the Department of Revenue.

22           Sec. 8. The Contractor Employee Classification Act shall  
23 not be construed to affect or apply to a common-law or statutory  
24 action providing for recovery in tort and shall not be construed  
25 to affect or change the common-law interpretation of independent

LB 563

LB 563

- 1 contractor status as it relates to tort liability or a workers'
- 2 compensation claim.