

OFFICE OF THE LABOR COMMISSIONER

INDEPENDENT CONTRACTOR - INFORMATION SHEET

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INDEPENDENT CONTRACTOR v. EMPLOYEE

- An independent contractor may not file a claim for wages unpaid when due. (NAC 608.155(2))
- Independent contractor means a self-employed person who agrees with a client to do work for the client, for a certain fee, according to the means or methods of the self-employed person and not subject to the supervision or control of the client except as to the result of the work. (NAC 608.155(4))

PERSONS PRESUMED TO BE INDEPENDENT CONTRACTORS (NRS 608.0155)

- Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year; the person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding; and the person satisfies three or more of the following criteria:
 - The person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract; Except for an agreement with the principal relating to the completion schedule, range of work hours or, the person has control over the time the work is performed;
 - The person is not required to work exclusively for one principal unless: A law, regulation or ordinance prohibits the person from providing services to more than one principal; or the person has entered into a written contract to provide services to only one principal for a limited period.
 - The person is free to hire employees to assist with the work.
 - The person contributes a substantial investment of capital in the business of the person, such as the: purchase or lease of ordinary tools, material and equipment regardless of source; obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and lease of any work space from the principal required to perform the work for which the person was engaged.
- The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.

SENATE BILL 493 (2019) – PRESUMPTION OF INDEPENDENT CONTRACTOR FOR CONSTRUCTION INDUSTRY

- A natural person is conclusively presumed to be an independent contractor if the person is a contractor or subcontractor licensed pursuant to chapter 624 of NRS or is directly compensated by a contractor or subcontractor licensed pursuant to chapter 624 of NRS for providing labor for which a license pursuant to chapter 624 of NRS is required to perform and:
 - (a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;
 - (b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and
 - (c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.
- The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.
- “Providing labor” does not include the delivery of supplies.

WHAT IS MISCLASSIFICATION AND POTENTIAL PENALTIES FOR MISCLASSIFICATION (SENATE BILL 493)

- An employer shall not: (a) Through means of coercion, misrepresentation or fraud, require a person to be classified as an independent contractor or form any business entity in order to classify the person as an independent contractor; or (b) Willfully misclassify or otherwise willfully fail to properly classify a person as an independent contractor.
 - Warning Letter; Administrative Penalties after Notice and an Opportunity for a Hearing.
 - Referral to Attorney General’s Office or other Law Enforcement Agencies.