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HOUSE BILL 653

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO EMPLOYMENT; ESTABLISHING A PRESUMPTION OF EMPLOYER AND EMPLOYEE RELATIONSHIP; SETTING STANDARDS TO INDICATE WHEN A WORKER IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"[NEW MATERIAL] EMPLOYER AND EMPLOYEE RELATIONSHIP-- INDEPENDENT CONTRACTOR.--For purposes of the employer and employee relationship in this state, except as otherwise provided by law, a person providing labor or services for compensation shall be considered an employee and not an "independent contractor" unless the following standards indicative of an independent contractor are met:

A. the person providing labor or services is free

1 from direction and control over the means and manner of
2 providing the labor or services, subject only to the right of
3 the person for whom the labor or services are provided to
4 specify the desired results;

5 B. the person providing labor or services is
6 responsible for obtaining business registrations or licenses
7 required by state law or local ordinance for the person to
8 provide the labor or services;

9 C. the person providing labor or services furnishes
10 the tools or equipment necessary to provide the labor or
11 services;

12 D. the person providing labor or services has the
13 authority to hire and fire employees to perform the labor or
14 services;

15 E. payment for labor or services is made upon
16 completion of the performance of specific portions of a project
17 or is made on the basis of a periodic retainer; and

18 F. the person providing labor or services
19 represents to the public that the labor or services are to be
20 provided by an independently established business. A person is
21 engaged in an independently established business when four or
22 more of the following circumstances exist:

23 (1) labor or services are primarily performed
24 at a location separate from the person's residence or in a
25 specific portion of the residence that is set aside for

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underscoring material = new
[bracketed material] = delete

1 performing labor or services;

2 (2) commercial advertising or business cards
3 are purchased by the person, or the person is a member of a
4 trade or professional association;

5 (3) telephone or email listings used for the
6 labor or services are different from the person's personal
7 listings;

8 (4) labor or services are performed only
9 pursuant to a written contract;

10 (5) labor or services are performed for two or
11 more persons within a period of one year; or

12 (6) the person assumes financial
13 responsibility for errors and omissions in labor or services as
14 evidenced by insurance, performance bonds and warranties
15 relating to the labor or services being provided."

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