

1 HB541  
2 200387-1  
3 By Representative Kitchens  
4 RFD: State Government  
5 First Read: 02-MAY-19

SYNOPSIS:           This bill would require an employer to utilize specified guidelines in order to determine whether a worker is engaged in employment for purposes of employment benefits and tax liabilities.

                  This bill would also require a state agency, when applicable, to utilize those same specified guidelines to determine whether a worker is to be considered as an employee.

A BILL  
TO BE ENTITLED  
AN ACT

                  Relating to employment; to require an employer to utilize specified guidelines in order to determine whether a worker is engaged in employment for purposes of employment benefits and tax liabilities; and to require a state agency, when applicable, to utilize those same specified guidelines to determine whether a worker is to be considered as an employee.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. For purposes of determining eligibility  
3 for benefits and protections pursuant to Title 25 of the Code  
4 of Alabama 1975, relating to employment and unemployment, or  
5 for determining tax liability for employees and employers  
6 pursuant to Title 40 of the Code of Alabama 1975, relating to  
7 revenue and taxation, an employer or state agency responsible  
8 for determining the employment status of an individual shall  
9 utilize the 20 factor test enumerated by the Internal Revenue  
10 Service in Rev. Rul. 87-41, 1987-1 C.B. 296, in making its  
11 determination and shall consider all of the following:

12 (1) Whether a person for whom a service is performed  
13 has the right to require compliance with instructions,  
14 including when, where, and how a worker is to work.

15 (2) Whether a worker is required to receive  
16 training, including, but not limited to:

17 a. Working with an experienced employee.

18 b. Corresponding with the person for whom a service  
19 is performed.

20 c. Attending meetings.

21 d. Other training methods.

22 (3) Whether a worker's services are integrated into  
23 the business operation of the person for whom a service is  
24 performed and are provided in a way that shows the worker's  
25 services are subject to the direction and control of the  
26 person for whom a service is performed.

1           (4) Whether a worker's services are required to be  
2 performed personally, indicating an interest in the methods  
3 used and the results.

4           (5) Whether a person for whom a service is performed  
5 hires, supervises, or pays assistants.

6           (6) Whether a continuing relationship exists between  
7 a worker performing services and a person for whom a service  
8 is performed.

9           (7) Whether a worker performing a service has work  
10 hours set by the person for whom a service is performed.

11           (8) Whether a worker is required to devote  
12 substantially full time to the business of the person for whom  
13 a service is performed, indicating the person for whom a  
14 service is performed has control over the amount of time the  
15 worker spends working and by implication restricts the worker  
16 from obtaining other gainful work.

17           (9)a. Whether the work is performed on the premises  
18 of the person for whom a service is performed, or the person  
19 for whom a service is performed has control over where the  
20 work takes place.

21           b. A person for whom a service is performed has  
22 control over where the work takes place if the person has the  
23 right to do any of the following:

24           1. Compel the worker to travel a designated route.

25           2. Compel the worker to canvass a territory within a  
26 certain time.

1           3. Require that the work be done at a specific  
2 place, especially if the work could be performed elsewhere.

3           (10) Whether a worker is required to perform  
4 services in the order or sequence set by the person for whom a  
5 service is performed or the person for whom a service is  
6 performed retains the right to set the order or sequence.

7           (11) Whether a worker is required to submit regular  
8 oral or written reports to the person for whom a service is  
9 performed.

10          (12) Whether a worker is paid by the hour, week, or  
11 month except when he or she is paid by the hour, week, or  
12 month only as a convenient way of paying a lump sum agreed  
13 upon as the cost of a job.

14          (13) Whether a person for whom a service is  
15 performed pays the worker's business or traveling expenses.

16          (14) Whether a person for whom a service is  
17 performed provides significant tools and materials to the  
18 worker performing services.

19          (15) Whether a worker invests in the facilities used  
20 in performing the services.

21          (16) Whether a worker realizes a profit or suffers a  
22 loss as a result of the services performed that is in addition  
23 to the profit or loss ordinarily realized by an employee.

24          (17) Whether a worker performs more than de minimis  
25 services for more than one person or firm at the same time,  
26 unless the persons or firms are part of the same service  
27 arrangement.

1                   (18) Whether a worker makes his or her services  
2 available to the general public on a regular and consistent  
3 basis.

4                   (19) Whether a person for whom a service is  
5 performed retains the right to discharge the worker.

6                   (20) Whether a worker has the right to terminate the  
7 relationship with the person for whom a service is performed  
8 at any time he or she wishes without incurring liability.

9                   Section 2. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.