

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 867

Short Title: Uniform Worker Classification Act. (Public)

Sponsors: Representatives Saine, Moffitt, and McNeely (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce, if favorable, Rules, Calendar, and Operations of the House

May 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM WORKER CLASSIFICATION ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.1.** This act shall be known and may be cited as the "Uniform Worker
5 Classification Act."

6 **SECTION 1.2.** Chapter 95 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 24.

9 "Uniform Worker Classification Act.

10 **§ 95-275. Legislative findings; purpose; effect on other laws and policies.**

11 (a) The General Assembly finds that:

12 (1) Recent developments in the workforce marketplace, and in particular with the
13 advent of the so-called "gig," "entrepreneurial," or "sharing" economy, have
14 highlighted the uncertainty that currently exists with determining the correct
15 classification of workers as independent contractors or employees. The proper
16 classification of workers as employees or independent contractors is a
17 complex legal issue that vexes workers and businesses, as well as lawyers and
18 the courts.

19 (2) Not only are the legal standards used to differentiate employees from
20 independent contractors generally subjective in nature, but those standards
21 differ based on the particular law at issue. As a result, some workers may be
22 found to be employees under one law but independent contractors under
23 another law, leaving the same person classified as an employee for some
24 purposes but as an independent contractor for other purposes.

25 (3) It is in the best interests of this State, workers, and businesses for there to be
26 certainty regarding the legal status of workers and their applicable rights and
27 obligations. Clarity in a worker's classification allows businesses to comply
28 with applicable laws, provides workers with certainty as to their benefits and
29 obligations, and minimizes unnecessary mistakes, litigation, risk, and legal
30 exposure.

31 (4) It is in the best interests of workers, business, and government to have clear,
32 objective, and uniform standards for determining who is an employee and who
33 is an independent contractor.

34 (5) The State must ensure that workers who are indeed "employees" are properly
35 classified as such and will be afforded with the legal protections and



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1 obligations that apply to such status, and that workers who desire to be, and
2 meet the standards of being, independent contractors will be entitled to the
3 freedoms that such a relationship provides, all of which will reduce
4 unnecessary and costly litigation and confusion in the workforce marketplace
5 and in the courts.

6 (b) The purpose of this Article is to bring clarity, certainty, and uniformity under the laws
7 of this State with regard to differentiating employees from independent contractors in
8 employment and by imposing objective and uniform standards for making that distinction.
9 Consequently, all laws where the application thereof is contingent upon the classification of a
10 worker as being an employee are superseded to the extent necessary, by this Article, including,
11 but not limited to, Article 83 of Chapter 143 of the General Statutes as it applies to reviewing or
12 determining employee classification for the purposes of workers' compensation, unemployment
13 compensation, employee wages and hours, taxation, or other purposes under the General Statutes.
14 **§ 95-276. Classification of independent contractors and employees.**

15 (a) Subject only to the provisions of subsection (b) of this section, a person shall be
16 classified as an independent contractor under the laws of this State if any of the following
17 conditions are met:

18 (1) The person signs a written contract with the principal, in substantial
19 compliance with the terms of this subsection, that states the principal's intent
20 to retain the services of the person as an independent contractor and contains
21 acknowledgements that the person understands that the person is:

22 a. Providing services for the principal as an independent contractor;

23 b. Not going to be treated as an employee of the principal;

24 c. Not going to be provided by the principal with either worker's
25 compensation or unemployment compensation benefits;

26 d. Obligated to pay all applicable federal and State income taxes, if any,
27 on any monies earned pursuant to the contractual relationship, and that
28 the principal will not make any tax withholdings from any payments
29 from the principal; and

30 e. Responsible for the majority of supplies and other variable expenses
31 that the person incurs in connection with performing the contracted for
32 services unless the expenses are for travel that is not local, the
33 expenses are reimbursed under an express provision of the contract, or
34 the supplies or expenses reimbursed are commonly reimbursed under
35 industry practice.

36 (2) The person has either filed, intends to file, or is contractually required to file,
37 in regard to the fees earned from the work, an income tax return with the
38 Internal Revenue Service for a business or for earnings from self-employment.

39 (3) The person provides services through a business entity, including, but not
40 limited to, a partnership, limited liability company or corporation, or through
41 a sole proprietorship registered as required under State or local law.

42 (4) With the exception of the exercise of control by the party that engages the
43 worker necessary to ensure the worker's compliance with statutory,
44 regulatory, licensing, permitting, or other similar obligations required by a
45 governmental or regulatory entity, or to protect persons or property, or to
46 protect a franchise brand (such as evaluating a worker's compliance with a
47 franchise brand's standards), the worker has the right to control the manner
48 and means by which the work is to be accomplished, even though he or she
49 may not have control over the final result of the work. This provision is
50 satisfied even though the party that engages the worker provides orientation,
51 information, guidance, or suggestions about products, business, processes,

1 services, customers, and operating systems and training otherwise required
2 important to protect a franchise brand's standards or by law.

3 (5) The person satisfies three or more of the following criteria listed in this
4 subdivision:

5 a. Except for an agreement with the party who engages the worker
6 relating to final completion or final delivery time or schedule, range of
7 work hours, services to be provided, or the time entertainment is to be
8 presented if the work contracted for is entertainment, the person has
9 control over the amount of time personally spent providing services.

10 b. Except for services that can only be performed at specific locations,
11 the person has control over where the services are performed.

12 c. The person is not required to work exclusively for one party unless:

13 1. A law, regulation, or ordinance prohibits the person from
14 providing services to more than one engaging party; or

15 2. A license or permit that the person is required to maintain in
16 order to perform the work limits the person to working for only
17 one engaging party at a time or requires identification of the
18 engaging party.

19 d. The person is free to exercise independent initiative in soliciting others
20 to purchase his or her services.

21 e. The person is free to hire employees or to contract with assistants,
22 helpers, or substitutes to perform all or some of the work.

23 f. The person cannot be required to perform additional services without
24 a new or modified contract.

25 g. The person obtains a license or other permission from the principal to
26 utilize any workspace of the engaging party in order to perform the
27 work for which the person was engaged.

28 h. The engaging party has been subject to an employment audit by the
29 Internal Revenue Service and the IRS has not reclassified the person
30 to be an employee or has not reclassified the category of workers to be
31 employees.

32 i. The person is responsible for maintaining and bearing the costs of any
33 required business licenses, insurance, certifications, or permits
34 required to perform the services.

35 (b) All workers who do not satisfy the criteria set forth in subsection (a) of this section
36 shall be classified as employees. In addition, nothing contained in subsection (a) of this section
37 requires a party engaging a worker to classify a worker who meets the criteria contained therein
38 as an independent contractor. The party engaging the worker may hire the worker as an employee.

39 **"§ 95-277. Preemption; uniformity required.**

40 (a) It is the intent of the General Assembly to provide for the uniformity of laws
41 governing the determination of independent contractor status.

42 (b) No city, county, municipality, unincorporated community, township, special district,
43 airport authority, port authority, or other local political subdivision of the State may adopt any
44 law, ordinance, regulation, code, charter, regulation, or other guidance in conflict with this
45 Article.

46 **"§ 95-278. Exemptions.**

47 The provisions of this section do not apply to employers as defined under section 3309 of the
48 Federal Unemployment Tax Act (26 U.S.C. § 3309).

49 **"§ 95-279. Severability.**

1 If any provision of this Article is declared unconstitutional or invalid by the courts, it does
2 not affect the validity of this Article as a whole or any part other than the part so declared to be
3 invalid."

4 **SECTION 2.1.** G.S. 143-786(b) reads as rewritten:

5 "(b) The provisions of Article 24 of Chapter 95 of the General Statutes, the Uniform
6 Worker Classification Act, apply in this Article. Nothing in this Article shall be construed or is
7 intended to change the definition of 'employer' or "employee" under any other provision of
8 law, provisions or requirements of the Uniform Worker Classification Act."

9 **SECTION 3.1.** This act becomes effective July 1, 2021.