

MAINE STATE LEGISLATURE

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No. 1345

H.P. 954

House of Representatives, March 12, 2007

**An Act To Simplify Standards for Determining Independent
Contractor Status for Unemployment Compensation Purposes**

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Farmington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §1043, sub-§11, ¶E,** as amended by PL 1979, c. 651, §45, is
3 further amended to read:

4 E. Services performed by an individual for remuneration ~~shall be~~ are deemed to be
5 employment subject to this chapter unless ~~and until~~ it is shown to the satisfaction of
6 the bureau that: the individual is an independent contractor.

7 ~~(1) Such individual has been and will continue to be free from control or~~
8 ~~direction over the performance of such services, both under his contract of~~
9 ~~service and in fact;~~

10 ~~(2) Such service is either outside the usual course of the business for which such~~
11 ~~service is performed, or that such service is performed outside of all the places of~~
12 ~~business of the enterprise for which such service is performed; and~~

13 ~~(3) Such individual is customarily engaged in an independently established trade,~~
14 ~~occupation, profession or business.~~

15 **Sec. 2. 26 MRSA §1043, sub-§14-A** is enacted to read:

16 **14-A. Independent contractor.** "Independent contractor" means a person who
17 performs services for another under contract, but who is not under the essential control or
18 superintendence of the other person while performing those services. In determining
19 whether such a relationship exists, the bureau shall consider:

20 A. Whether or not a contract exists for the person to perform a certain piece or kind
21 of work at a fixed price;

22 B. Whether or not the person employs assistants with the right to supervise their
23 activities;

24 C. Whether or not the person has an obligation to furnish any necessary tools,
25 supplies and materials;

26 D. Whether or not the person has the right to control the progress of the work, except
27 as to final results;

28 E. Whether or not the work is part of the regular business of the employer;

29 F. Whether or not the person's business or occupation is typically of an independent
30 nature;

31 G. The amount of time for which the person is employed; and

32 H. The method of payment, whether by time or by job.

33 In applying these factors, the bureau may not give any particular factor a greater weight
34 than any other factor, nor may the existence or absence of any one factor be decisive.
35 The bureau shall consider the totality of the relationship in determining whether an
36 employer exercises essential control or superintendence of the person.

37 **Sec. 3. 26 MRSA §1052** is enacted to read:

1 **§1052. Predetermination of independent contractor status**

2 **1. Predetermination permitted.** A worker or an employer may apply to the bureau
3 for a predetermination of whether the status of an individual worker, group of workers or
4 a job classification associated with the employer is that of an employee or an independent
5 contractor.

6 A. The predetermination by the board creates a rebuttable presumption that the
7 determination is correct in any later claim for benefits under this chapter.

8 B. Nothing in this section requires a worker or an employer to request
9 predetermination.

10 **2. Predetermination submission.** A party may submit, on forms approved by the
11 bureau, a request for predetermination regarding the status of a person or job description
12 as an employee or independent contractor. The status requested by a party is deemed to
13 have been approved if the bureau does not deny or take other appropriate action on the
14 submission within 14 days.

15 **3. Rulemaking.** The bureau may adopt rules to implement the intent of this section,
16 which is to afford speedy and equitable predetermination of employee and independent
17 contractor status. Rules adopted pursuant to this subsection are routine technical rules as
18 defined in Title 5, chapter 375, subchapter 2-A.

19 **SUMMARY**

20 This bill defines "independent contractor" under the laws governing unemployment
21 compensation to make it consistent with the definition of that term under the laws
22 governing workers' compensation. In addition, this bill authorizes the Bureau of
23 Unemployment Compensation to issue a predetermination of independent contractor
24 status.