

Senate Bill No. 224–Committee on
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to employment; establishing a conclusive presumption that a person is an independent contractor if certain conditions are met; excluding the relationship between a principal and an independent contractor from certain provisions governing the payment of minimum wage to an employee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 16 of Article 15 of the Nevada Constitution defines the term “employee” and requires each employer to pay a certain minimum wage to each employee. Existing law imposes certain additional requirements relating to compensation, wages and hours of employees. (Chapter 608 of NRS) **Section 1** of this bill establishes a conclusive presumption that a person is an independent contractor, rather than an employee, if certain conditions are met. **Section 5** of this bill excludes the relationship between a principal and an independent contractor from those relationships that constitute employment relationships for the purpose of requiring the payment of a minimum wage. **Section 7** of this bill applies the provisions of this bill to any action or proceeding to recover unpaid wages pursuant to a requirement to pay a minimum wage in which a final decision has not been rendered as of the effective date of this bill.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:

(a) 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;

(b) The person is required by the contract with the principal to hold any necessary state or local business license and to maintain any necessary occupational license, insurance or bonding; and

(c) The person satisfies three or more of the following criteria:



(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, 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.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or

(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;

(II) 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

(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

↳ The determination of whether an investment of capital is substantial for the purpose of this subparagraph must be made on the basis of the amount of income the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages.

2. 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 I does not automatically create a presumption that the person is an employee.

3. As used in this section, "foreign national" has the meaning ascribed to it in NRS 294A.325.

Secs. 2-4. (Deleted by amendment.)



Sec. 5. NRS 608.255 is hereby amended to read as follows:

608.255 For the purposes of this chapter and any other statutory or constitutional provision governing the minimum wage paid to an employee, the following relationships do not constitute employment relationships and are therefore not subject to those provisions:

1. The relationship between a rehabilitation facility or workshop established by the Department of Employment, Training and Rehabilitation pursuant to chapter 615 of NRS and an individual with a disability who is participating in a training or rehabilitative program of such a facility or workshop.

2. The relationship between a provider of jobs and day training services which is recognized as exempt pursuant to the provisions of 26 U.S.C. § 501(c)(3) and which has been issued a certificate by the Division of Public and Behavioral Health of the Department of Health and Human Services pursuant to NRS 435.130 to 435.310, inclusive, and a person with an intellectual disability or a person with a related condition participating in a jobs and day training services program.

3. *The relationship between a principal and an independent contractor.*

Sec. 6. (Deleted by amendment.)

Sec. 7. The amendatory provisions of this act apply to an action or proceeding to recover unpaid wages pursuant to Section 16 of Article 15 of the Nevada Constitution or NRS 608.250 to 608.290, inclusive, in which a final decision has not been rendered before, on or after the effective date of this act.

Sec. 8. This act becomes effective upon passage and approval.

