

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 4204

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 14, 2019

The Senate Labor Committee reports favorably, with committee amendments, Senate Bill, No. 4204.

As amended by the committee, the bill provides that, for the purposes of all State employment laws, individuals who perform services for remuneration are employees, not independent contractors, and are subject to the provisions of those laws, and entitled to all remedies for any violations of those laws, unless and until it is shown to the satisfaction of the Commissioner that:

a. The individual has been and will continue to be free from control or direction over the performance of the service, both under the individual's contract of service and in fact; and

b. The individual's service is either outside the usual course of the business for which that service is performed; and

c. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the work performed.

The bill defines "State wage and hour laws" as Article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.), and Article 3 of chapter 11 of Title 34 of the Revised Statutes (R.S.34:11-57 et seq.). The bill, however, excludes from that definition the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L. 2007, c.114 (C.34:20-1 et seq.).

In addition, the bill modifies the similar "a.b.c." test in the State "unemployment compensation law" (R.S.43:21-1 et seq.), and the "Construction Industry Independent Contractor Act," P.L. 2007, c.114 (C.34:20-1 et seq.), both of which currently provide that service performed by an individual is not regarded as an employment subject to that law if:

a. The individual has been and will continue to be free from control or direction over the performance of the service, both under his contract of service and in fact; and

b. The individual's service is either outside the usual course of the business for which the service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

c. The individual is customarily engaged in an independently established trade, occupation, profession or business.

The bill modifies "b." of the "a.b.c." test in the unemployment compensation and construction industry independent contractor laws so that service is not exempt from being considered employment for that law solely because the service is performed outside of all the places of business of the enterprise for which the service is performed.

The bill modifies "c." of the "a.b.c." test in those laws by indicating that the exemption from being considered employment because the individual is customarily engaged in an independently established trade, occupation, profession or business only applies if they are of the same nature as the trade, occupation, profession or business involved in the work performed.

Committee Amendments:

The amendments adopted by the committee provide that certified public accountants not be regarded as employees for the purposes of State wage and hour laws.

The amendments also exempt from coverage as "employees" under State wage and hour laws, if they are exempt under the Federal Unemployment Tax Act (FUTA), the following groups: real estate salesmen or brokers compensated by commissions; securities broker agents and salesmen; and certain insurance company agents. As these groups are currently exempt from coverage under FUTA and the State unemployment insurance law, and the State's wage and hour statutes currently have no "a.b.c." test, no current State statute applies this test to these groups. Consequently, the bill, as amended, makes no change in the law affecting the status of members of these groups with respect to whether they are "employees" or "independent contractors."