

New Laws Define Independent Contractor Status in Arizona

By Monica M. Ryden

August 1, 2016

Effective on August 6, 2016, Arizona law on employment relationships will allow employers contracting with an independent contractor to prove the existence of such a relationship by having the independent contractor sign a declaration. Under the new law, the execution of a declaration creates a rebuttable presumption that an independent contractor relationship exists.

The law provides sample language for the declaration, including the following:

1. acknowledgement that the contracting party does not restrict the contractor's ability to perform services for or through other parties,
2. expectation that the contractor provides services for other parties, and the employer does not dictate the performance, methods, or process the contractor uses to perform services, and
3. acknowledgement that the independent contractor is paid by the job and not on a salary or hourly basis, and is not covered by the employer's health or worker's compensation insurance.

An employer's use of a declaration is entirely optional, but there appears to be no meaningful disadvantage to doing so. The absence of such a declaration does not raise a presumption that an independent contractor relationship does not exist.

The new Arizona law also provides that any supervision or control exercised by the employing organization to comply with federal or state law cannot be considered for the purposes of determining whether a worker is an independent contractor or an employee. This includes efforts to comply with any licensing requirements or professional or ethical standards.

Another new law classifies as independent contractors individuals or entities using a *qualified marketplace platform's* digital platform to provide services to third-party individuals. Under the new statute, the *qualified marketplace contractor* has independent contractor status if payment for services includes substantially all of the services performed and there is a written contract in effect between the parties. The written contract must provide:

1. that the contractor is providing services as an independent contractor and not as an employee;
2. that any payment to the contractor is for services rendered;
3. that the contract may require work during the work hours/schedule set by the contractor;
4. that the contract does not restrict the contractor's ability to perform services for other parties;
5. that the contractor pays substantially all expenses related to the services;
6. that the contractor is responsible for payment of all income-related taxes; and
7. that either party may terminate the contract at any time, with reasonable notice.

While these further define independent contractor status in Arizona, federal law is unaffected. The new laws do not otherwise effect any investigatory or enforcement authority related to the determination of independent contractor or employment status of any relationship.

For questions about defining independent contractor status across federal and state laws, please contact Jackson Lewis.

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