

LAWMAKER REVIEW



HARMFUL INDEPENDENT CONTRACTOR BILLS

January 25, 2019

On Monday, Jan. 28, [SB 5513](#) (*AN ACT Relating to simplifying, clarifying and making consistent employee status under industrial insurance laws, prevailing wage laws, wage deduction laws, wage payment laws, minimum wage laws and unemployment compensation laws, and creating the Employee Fair Classification Act*) and its House companion, [HB 1515](#) will be heard at 10:00 a.m. and 1:30 p.m. respectively.

Notwithstanding the title of the bills, they *do not* simplify or create fairness in employment for independent contractors nor those who hire them.

Under the bills, the current 6/7 part test defining independent contractor status remains in place with the addition of a troublesome and undefined “direction and control” element, making it impossible to verify elements such as whether an independent contractor pays his/her federal tax obligations.

In addition, the proposal flips the burden of proof standard for those companies that contract with independent contractors. Anyone on a jobsite that claims independent contractor status will be presumed to be an employee of the entity that contracted for the work and the contracting entity must show, with evidence that would withstand legal challenge, that the individual in question is indeed a bona fide independent contractor. If not, the contracting entity will owe L&I premiums, Employment Security premiums and other tax and benefit obligations on the individual in question. The burden of proving that a legitimate contractor/independent contractor relationship exists could be more costly than paying the benefits themselves.

If any violations are found on the part of the contracting entity, these bills require *triple* damages be paid to the individual that has been determined to be an employee rather than an independent contractor. There is no recognition or acknowledgment of any responsibility and/or culpability that the “employee” has an illegal or improper independent contractor relationship. All penalties/fines are directed at the hiring entity/employer.

If passed, these bills will likely result in the near elimination of individual independent contractors in many industries, including construction. For instance, the individuals you hire to do jobs like finish carpentry will likely become your employees regardless of whether you or they desire an employer/employee relationship. There is no recognition in the bills that there are legitimate reasons for people to be independent contractors; rather, the presumption is that all independent contractor relationships are for nefarious purposes.

BIAW and many other business groups strongly oppose both of these bills and will testify as such on Monday.