



Article 322

December 1, 2013

Organization Aims to Give Independent Contractors a Voice in New Mexico

By Senator Blanche Lincoln, Chairwoman, It's My Business coalition

Solo entrepreneurs — some of whom are independent contractors, others just one-person companies with no employees — make up 77 percent of New Mexico's businesses, according to the U.S. Census Bureau's 2007 Small Business Survey, and they generate about \$4.5 billion in revenue each year.



While at least part of the revenue generated by independent contractors is subject to New Mexico's gross receipts tax, companies that engage independent contractors are exempt from collecting and paying payroll taxes that would be required if the contractors were classified as employees.

Because some businesses for years have abused this distinction to avoid paying payroll and workers' compensation taxes, Congress and many state legislatures, including New Mexico's, are reevaluating their laws governing classification of employees and independent contractors — sometimes called 1099ers because of the tax form used to report their income.

So far, New Mexico lawmakers have concluded that existing laws, properly enforced, suffice to deal with deliberate misclassification. But one advocacy group, a coalition of individuals and organizations called It's My Business, is concerned that ongoing efforts to combat the misdeeds of a few will lead to regulatory burdens on all businesses. The result would be to make it more difficult, if not impossible, for independent contractors to find work and grow their business.

One important fact is nearly always overlooked in the classification debate: The IRS says independent contractors comply with tax laws at virtually the same rate as employees in traditional work roles.

Unintended Consequences

New Mexico's House Bill 91 (the employee Fair Classification Act), introduced in 2012 by Rep. Eleanor Chavez of Albuquerque's South Valley, aimed to protect the rights of workers improperly classified as independent contractors and to fight fraud by employers who misclassify employees to evade taxes that states need to provide public services.

The bill wouldn't have legislated an end to the use of independent contractors, but It's My Business fears that would have been an unintended consequence had it passed, as businesses would have concluded it was too risky to delegate work to independents. The bill would have placed greater burdens on businesses that hire independent contractors by creating the presumption of employee status and requiring businesses to establish independent contractor status by a preponderance of evidence.

Disputes over worker status would have been decided at civil trial under the proposed legislation. If convicted of misclassifying an employee, a company would have had to pay compensatory damages equal to double the salary or compensation the plaintiff would have earned as an employee. The potential for abuse by a disgruntled 1099er would have made many companies think twice before engaging an independent contractor.

Unneeded Over-Reach

Most companies that depend on independent contractors understand their liability for misclassification and duly document how they're complying with the law. Rather than imposing stricter regulations on businesses that are playing by the rules – and creating uncertainty in the lives of tens of millions of independent contractors across the nation – It's My Business believes governments should do a better job enforcing existing federal laws against misclassification.

Independent contractors such as graphic artists, website developers and financial consultants offer businesses a way to get work done when hiring an employee is not feasible. And contractor arrangements are a way for individuals to start their own businesses and create jobs for others.

It's My Business supports the rights of independent contractors to work under a flexible work model that rewards job completion rather than time on the job. For more information, visit www.itsmybusiness.com.

Finance New Mexico is a public service initiative to assist individuals and businesses with obtaining skills and funding resources for their business or idea. To learn more, go to www.FinanceNewMexico.org. Sponsored by:

