

SENATE BILL 1192

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EMERGENCY BILL

7lr3797

By: **Senators Manno and Middleton**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 15, 2017

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Unemployment Insurance – Independent Contractors**
3 **and Severance Pay**

4 FOR the purpose of specifying factors that must be evidenced in order for the Secretary of
5 Labor, Licensing, and Regulation to be satisfied that the work that an individual
6 performs under a certain contract is not covered employment for purposes of the
7 unemployment insurance law; providing for the application of certain provisions of
8 law governing the effect of dismissal payments or wages in lieu of notice on
9 unemployment benefits; making this Act an emergency measure; and generally
10 relating to independent contractors and severance pay under the unemployment
11 insurance law.

12 BY repealing and reenacting, with amendments,
13 Article – Labor and Employment
14 Section 8–205 and 8–1009
15 Annotated Code of Maryland
16 (2016 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Labor and Employment**

20 8–205.

21 (a) Work that an individual performs under any contract of hire is not covered
22 employment if the Secretary is satisfied that:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) the individual who performs the work is free from control and direction
2 over its performance both in fact and under the contract, **AS EVIDENCED BY THE**
3 **EMPLOYING UNIT:**

4 (I) **NOT REQUIRING THE INDIVIDUAL TO COMPLY WITH**
5 **DETAILED INSTRUCTIONS ABOUT WHEN, WHERE, AND HOW THE INDIVIDUAL IS TO**
6 **WORK;**

7 (II) **NOT TRAINING THE INDIVIDUAL TO PERFORM THE SERVICE**
8 **IN A PARTICULAR MANNER OR USING A PARTICULAR METHOD DETERMINED BY THE**
9 **EMPLOYING UNIT;**

10 (III) **NOT ESTABLISHING SET HOURS OF WORK FOR THE**
11 **INDIVIDUAL PERFORMING THE SERVICE;**

12 (IV) **NOT ESTABLISHING A SCHEDULE OR ROUTINE FOR THE**
13 **INDIVIDUAL PERFORMING THE SERVICE; AND**

14 (V) **BEING PROHIBITED FROM DISCHARGING THE INDIVIDUAL**
15 **FOR FAILURE TO OBEY THE EMPLOYING UNIT'S SPECIFIC INSTRUCTIONS ON HOW**
16 **THE SERVICE IS TO BE PERFORMED;**

17 (2) the individual customarily is engaged in an independent business or
18 occupation of the same nature as that involved in the work, **AS EVIDENCED BY THE**
19 **INDIVIDUAL:**

20 (I) **MAINTAINING A BUSINESS LISTING IN THE TELEPHONE**
21 **DIRECTORY;**

22 (II) **HAVING THE INDIVIDUAL'S OWN PLACE OF BUSINESS;**

23 (III) **HAVING A FINANCIAL INVESTMENT IN A RELATED BUSINESS**
24 **AND BEING ABLE TO INCUR A LOSS IN THE PERFORMANCE OF THE SERVICE;**

25 (IV) **HAVING THE INDIVIDUAL'S OWN EQUIPMENT NEEDED TO**
26 **PERFORM THE SERVICE;**

27 (V) **DETERMINING THE PRICE OF THE SERVICE TO BE**
28 **PERFORMED;**

29 (VI) **EMPLOYING OTHERS TO PERFORM THE SERVICE;**

30 (VII) **CARRYING THE INDIVIDUAL'S OWN LIABILITY OR WORKERS'**
31 **COMPENSATION INSURANCE, OR BOTH;**

1 (VIII) PERFORMING THE SERVICE FOR MORE THAN ONE
 2 UNRELATED EMPLOYER AT THE SAME TIME;

3 (IX) SETTING THE INDIVIDUAL’S OWN HOURS; AND

4 (X) BEING PAID BY THE JOB; and

5 (3) the work is:

6 (i) outside of the usual course of business of the person for whom
 7 the work is performed, AS EVIDENCED BY:

8 1. THE INDIVIDUAL PERFORMING THE WORK OFF THE
 9 EMPLOYING UNIT’S PREMISES;

10 2. THE INDIVIDUAL PERFORMING WORK THAT IS NOT
 11 INTEGRATED INTO THE EMPLOYING UNIT’S OPERATION; AND

12 3. THE SERVICE PERFORMED BEING UNRELATED TO THE
 13 EMPLOYING UNIT’S BUSINESS; or

14 (ii) performed outside of any place of business of the person for whom
 15 the work is performed.

16 (b) The Secretary shall adopt regulations to provide:

17 (1) general guidance about the application of subsection (a) of this section;
 18 and

19 (2) specific examples of how subsection (a) of this section is applied to
 20 certain industries, including the construction industry, the landscaping industry, and the
 21 home care services industry.

22 8–1009.

23 (A) THIS SECTION DOES NOT APPLY TO A DISMISSAL PAYMENT OR WAGES IN
 24 LIEU OF NOTICE THAT AN INDIVIDUAL RECEIVES IN EXCHANGE FOR THE INDIVIDUAL
 25 SIGNING A RELEASE OF CLAIMS WHEN LEAVING EMPLOYMENT.

26 [(a)] (B) (1) For each week that the Secretary finds an individual who
 27 otherwise is eligible for benefits receives or is eligible to receive dismissal payment or wages
 28 in lieu of notice, regardless of whether the payment is required by law:

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1 (i) if the payment at least equals the individual's weekly benefit
2 amount, the individual is disqualified from receiving benefits; or

3 (ii) if the payment is less than the individual's weekly benefit
4 amount, the individual may receive benefits reduced by the amount of the payment.

5 (2) Dismissal payment or wages in lieu of notice shall be allocated to a
6 number of weeks following separation from employment that equals the number of weeks
7 of wages received.

8 **[(b)] (C)** An individual who is otherwise eligible for benefits, including benefits
9 payable under the Unemployment Compensation for Ex-Service Members Program in
10 accordance with 5 U.S.C. § 8521 may receive benefits, and the benefits may not be reduced
11 under subsection **[(a)(2)] (B)(2)** of this section, for each week that the Secretary finds that
12 the individual receives or is eligible to receive military disability severance payments.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
14 measure, is necessary for the immediate preservation of the public health or safety, has
15 been passed by a yea and nay vote supported by three-fifths of all the members elected to
16 each of the two Houses of the General Assembly, and shall take effect from the date it is
17 enacted.