



# SENATE BILL 407: Employee Misclassification/IC Changes.

2017-2018 General Assembly

<b>Committee:</b>	<b>Date:</b>	September 28, 2017
<b>Introduced by:</b>	<b>Prepared by:</b>	Brad Krehely Staff Attorney
<b>Analysis of:</b>	S.L. 2017-203	

**OVERVIEW:** *S.L. 2017-203 enacts the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section is authorized to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations. The act also requires State occupational licensing boards to include on every application for a license: (1) a certification that the applicant has read a notice statement on employee misclassification and (2) disclosure, by the applicant, of any investigations for employee misclassification. The provisions dealing with employee misclassification become effective December 31, 2017. The act also requires the Industrial Commission to adopt rules for the utilization of opioids and pain management treatment and exempts the Industrial Commission from a fiscal note requirement to allow rules to be implemented more quickly. These provisions became effective August 11, 2017.*

**CURRENT LAW:** Employee misclassification occurs when a business hires an individual to work under the business's control as an employee, but classifies the individual as an independent contractor. The misclassification allows the business to avoid income tax withholding, federal payroll taxes, State unemployment insurance (UI) taxes, State workers' compensation insurance coverage, minimum wage and overtime pay, and responsibility for the protection and conduct of employees.

Four State agencies independently investigate employee misclassification:

- Department of Labor (Chapter 95 – Wage and Hour Act)
- Department of Commerce's Division of Employment Security (Chapter 96 – UI taxes)
- Industrial Commission (Chapter 97 – workers' compensation insurance)
- Department of Revenue (Chapter 105 – withholding and payroll taxes)

On December 18, 2015, former Governor McCrory issued Executive Order No. 83 establishing the Employee Classification Section within the Industrial Commission. The Section currently operates.

### BILL ANALYSIS:

**Sections 1-3** enact the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section coordinates the investigation of employee misclassification.

The Section is specifically authorized to:

- Receive complaints of employee misclassification

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# Senate Bill 407

Page 2

- Investigate reports of employee misclassification and coordinate with other State agencies
- Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties
- Provide information about each report of employee misclassification to the Department of Labor, the Division of Employment Security within the Department of Commerce, the Department of Revenue, and the Industrial Commission to facilitate investigation of potential statutory violations.
- Create a publicly available notice that includes the definition of employee misclassification as part of the poster summarizing the major provisions of North Carolina's labor laws.
- Develop methods to share information between State agencies to identify possible employee misclassification
- Educate employers, employees, and the public about employee misclassification
- Report annually to the Governor and to the Joint Legislative Commission on Governmental Operations
- Adopt rules

All State occupational licensing boards that are authorized to issue any license, permit, or certification must include on every application for licensure, permit, or certification, or application for renewal the following: (1) certification by the applicant that the applicant has read and understands the public notice statement on employee misclassification and (2) disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board. The penalty for failure to supply the certification and disclosure is denial of the license, permit, or certification.

**Section 4** requires the Industrial Commission to adopt rules for the utilization of opioids and pain management treatment and exempts the Industrial Commission from a fiscal note requirement to allow rules to be implemented more quickly.

**Section 5** deletes the requirement that the Industrial Commission study causes of injury in employment and recommend ways to prevent such injuries.

**Section 6** delays the effective date for a requirement that employees respond to unemployment insurance claims in 10 days.

**EFFECTIVE DATE:** The provisions dealing with employee misclassification become effective December 31, 2017. The remainder of this act became effective August 11, 2017.

*Greg Roney, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.*