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John Bel Edwards, Governor
Ava Cates, Secretary

Office of the Secretary

November 3, 2021

The Honorable John Bel Edwards
Governor of Louisiana
900 N. Third Street, Fourth Floor
Baton Rouge, LA 70802

VIA EMAIL ONLY TO: sherry.lassere@la.gov and john.walsh@la.gov

RE: Emergency Rule Providing for Clarification of the Duties and Responsibilities of the Secretary of the Louisiana Workforce Commission Under Act No. 297 of the 2021 Regular Legislative Session

Dear Governor Edwards:

Pursuant to La. R.S. 49:953.1, the Louisiana Workforce Commission hereby gives notice of the adoption of Emergency Rule 387.

Act No. 297, which creates the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program, is not in conformity with federal law and regulations. The LWC adopted Emergency Rule 385, which will be effective November 8, 2021, to invoke the savings clause under La. R.S. 23:1664 and delay implementation of Act No. 297 until the statute is amended during the 2022 Regular Legislative Session. Emergency Rule 387 is necessary to clarify the duties and responsibilities of the Secretary of the Louisiana Workforce Commission under Act No. 297. Louisiana Workforce Commission finds that an imminent peril to public health, safety and welfare requires that this emergency rule be adopted without prior notice or hearing. In accordance with Title 23 of the Revised Statutes of 1950, as amended and reenacted or enacted, La. R.S. 36:303 and La. R.S. 36:304, failure to adopt this Rule on an emergency basis will imperil the LWC's ability to implement the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program.

The Emergency Rule shall be effective on January 1, 2022, and shall remain in effect for the maximum allowable period under the law or until a final Rule is promulgated, whichever occurs first. The agency shall take appropriate measures to make the Emergency Rule known to the persons who may be affected. You will find a copy of the Declaration of Emergency and the related Emergency Rule attached.

If you have any questions, please contact me at (225) 342-3001.

Yours truly,

Ava Cates
Secretary

Enclosures (2)

cc: Clay Schexnayder, Speaker of the House at apa.housespeaker@legis.la.gov
Patrick Page Cortez, Senate President at apa.senatepresident@legis.la.gov
Jeff Landry, Attorney General at apa.submission@ag.louisiana.gov
Office of the State Register at Reg.Submission@la.gov

DECLARATION OF EMERGENCY

Louisiana Workforce Commission Office of Unemployment Insurance Administration

Emergency Rule— Clarification of the Duties and Responsibilities of the Secretary of the Louisiana Workforce Commission Under Act No. 297 of the 2021 Regular Legislative Session
(LAC 40:IV.387)

The Louisiana Workforce Commission (LWC) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953.1, to promulgate a Rule to clarify the duties and responsibilities of the Secretary of the Louisiana Workforce Commission under Act No. 297 of the 2021 Regular Legislative Session (the enacted version of SB 244).

Act No. 297 creates the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program (VDA Program) for the voluntary and anonymous reporting of undisclosed liabilities for withholding taxes administered by the Department of Revenue (DOR) and unemployment taxes administered by LWC. The LWC adopted Emergency Rule 385 to delay the implementation of provisions of Act No. 297 that are not in conformity with Federal Unemployment Compensation (UC) law. This Emergency Rule is necessary to clarify the duties and responsibilities of the Secretary of the Louisiana Workforce Commission regarding the agency's administration of the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program. A delay in promulgating this Rule will have an adverse impact on the Louisiana Workforce Commission's implementation of Act No. 297, which was signed into law by the Governor on June 14, 2021, and is effective on January 1, 2022. It is imperative that the LWC proceed expediently and take immediate action with this Rule because of the adverse impact COVID-19 has had on the UC trust fund balance and businesses in the state. It is also imperative that the LWC promulgate this Rule to prevent imminent peril to the public health, safety, and welfare. Failure to adopt this Rule on an emergency basis may jeopardize LWC's ability to administer the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program.

This declaration of emergency is effective January 1, 2022, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, R.S. 49:953.1, or until adoption of the final Rule, whichever occurs first.

Title 40
LABOR AND EMPLOYMENT
Part IV. Employment Security

Chapter 3. Employment Security Law

§387. Clarification of the Duties and Responsibilities of the Secretary of the Louisiana Workforce Commission Under Act No. 297 of the 2021 Regular Legislative Session

A. Act No. 297 of the 2021 Regular Legislative Session (the enacted version of SB 244), effective January 1, 2022, creates the Fresh Start Proper Worker Classification Initiative and Louisiana Voluntary Disclosure Program (VDA Program) for the voluntary and anonymous reporting of undisclosed liabilities for withholding taxes administered by the Department of Revenue (DOR) and unemployment taxes administered by the Louisiana Workforce Commission (LWC). Act No. 297 requires employers to produce a certificate of proof of workers' compensation coverage for the employee and to enter into a closing agreement with the LWC and the DOR. Under Act No. 297, an accepted application constitutes a joint closing agreement between the taxpayer and the LWC and DOR that constitutes confirmation by the taxpayer to treat the class or classes of workers identified in the application as employees. The LWC shall have authority to promulgate rules and regulations for the administration of the Fresh Start Proper Worker Classification Initiative under Act No. 297. The LWC adopted Emergency Rule 385 to delay implementation of Act No. 297 that are inconsistent with Federal UC law. This Rule, in accordance with the jurisdiction of the Secretary of the LWC under Title 23 of the Revised Statutes of 1950, as amended and reenacted or enacted, entitled, "Labor and Worker's Compensation," R.S. 36:303, which provides that the Secretary of the LWC is the Executive Head and Chief Administrative Officer and R.S. 36:304, which describes the powers and duties and responsibilities of the LWC Secretary, makes clear that LWC's Secretary shall have authority to approve applications for the Fresh Start Proper Worker Classification Initiative and Voluntary Disclosure Programs after Act No. 297 is amended during the 2022 Regular Legislative Session. This Emergency Rule is to be adopted in conjunction with the LWC's Emergency Rule 385. A delay in promulgating this Rule will have an adverse impact on the implementation of Act No. 297 for the Louisiana Workforce Commission.

AUTHORITY NOTE: Promulgated in accordance with Act No. 297, Title 23 of the Revised Statutes of 1950, as amended and reenacted or enacted, R.S. 36:303 and R.S. 36:304.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Unemployment Insurance Administration, LR 47:

Inquiries concerning the proposed enactment may be sent to Assistant Secretary Robert Wooley, UI Administration, 1001 North 23rd Street, Baton Rouge, LA 70802 or at Rwooley@lwc.la.gov.


Ava Cates
Secretary

11/3/2021