

Bill as Introduced

HB 1368 - AS INTRODUCED

2010 SESSION

10-2413
01/10

HOUSE BILL **1368**

AN ACT relative to the definition of "employee" for workers' compensation purposes.

SPONSORS: Rep. Goley, Hills 8; Rep. Craig, Hills 9; Rep. R. Holden, Hills 7; Rep. Barody,
 Hills 13; Sen. DeVries, Dist 18; Sen. Cilley, Dist 6

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill clarifies the evidence required to establish the relationship between the employer and the person providing services under the workers' compensation law.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to the definition of "employee" for workers' compensation purposes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Workers' Compensation; Definition of "Employee." Amend RSA 281-A:2, VI(c) to read as
2 follows:

3 (c) Prima facie evidence that the criteria prescribed in subparagraphs (b)(1)(A)-(L) have
4 been met may be established by a written agreement signed by the employer and the person
5 providing services, on or about the date such person was engaged, which describes the services to be
6 performed and affirms that such services are to be performed in accordance with each of the criteria.
7 Nothing in this subparagraph shall require such an agreement to establish that the criteria have
8 been met. If the commissioner finds that ~~[the employer's use of such written agreement was~~
9 ~~intended to misrepresent]~~ ***an employer has misrepresented*** the relationship between the employer
10 and the person providing services, the commissioner may assess a civil penalty of up to \$2,500; in
11 addition, such employer shall be assessed a civil penalty of \$100 per employee for each day of
12 noncompliance. The fines shall be assessed from the first day of the infraction but not to exceed one
13 year. Notwithstanding any provision of law to the contrary, any person with control or responsibility
14 over decisions to disburse funds and salaries and who knowingly violates the provisions of this
15 subparagraph shall be held personally liable for payments of fines. All funds collected under this
16 subparagraph shall be continually appropriated and deposited into a nonlapsing workers'
17 compensation fraud fund dedicated to the investigation and compliance activities required by this
18 section and related sections pertaining to labor and insurance law. The commissioner of labor shall
19 appoint as many individuals as necessary to carry out the department's responsibilities under this
20 section.

21 2 Effective Date. This act shall take effect January 1, 2011.

Amendments

Rep. Goley, Hills. 8
January 15, 2010
2010-0168h
01/10

**IF this amendment is adopted
by the Committee, please
deliver to the House Clerk
(Room 317) or Senate Clerk
(Senate Chamber), the 2
originals and 2 copies.**



Amendment to HB 1368

1 Amend RSA 281-A:2, VI(c) as inserted by section 1 of the bill by replacing it with the following:

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2010-0168h

AMENDED ANALYSIS

This bill clarifies the evidence required to establish the relationship between the employer and the person providing services under the workers' compensation law. The bill also changes a civil penalty from mandatory to discretionary.

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- Page 2 -

2010-0168h

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Rep. Goley, Hills. 8
January 26, 2010
2010-0315h
01/09

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deliver to the House Clerk
(Room 317) or Senate Clerk
(Senate Chamber), the 2
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Amendment to HB 1368

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Speakers

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: January 7, 2010

LOB ROOM: 307 **Time Public Hearing Called to Order:** 2:00 p.m.

Time Adjourned: 2:56 p.m.

(please circle if present)

Committee Members: Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

Bill Sponsors: Rep. Goley, Hills 8; Rep. Craig, Hills 9; Rep. Ro. Holden, Hills 7; Rep. Baroody, Hills 13; Sen. DeVries, Dist 18; Sen. Cilley, Dist 6

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Jeff Goley - Prime sponsor of the bill. This bill was requested by the Department of Labor and the Task Force on Misclassification. There will be an amendment that changes "shall" to "may" assess a penalty. The reason for this change was the problem that agreement only needed to be verbal, so written contracts weren't available. This change of language will make enforcement easier.

Q: The change is on line 11? ANS: Yes.

Q: So some will be written and some verbal? ANS: I don't think there's anything in statute that requires all agreements to be written.

Q: Can we clear up the language on line 4? ANS: Yes.

Martin Jenkins, NH Department of Labor - Supports the bill. This will make it much more effective when attempting to enforce the law whenever, in what ever way, misrepresentation occurs. We've realized that people who mean to misrepresent don't write it down.

Q: We're leaving penalties up to the Commission of Labor? ANS: It comes up more often in the wage and hour area. The discretion is used to make it more reasonable for small businesses.

Q: Can we change the language on line 4 from "may be established by" to "is"? ANS: I think everyone understands what it means, but I'm not opposed to that.

Gary Abbott, Associated General Contractors - Opposed the bill. The original language in this paragraph was written specifically to address written agreements that would be binding. This language made it tougher, but the written agreement language should remain, and there should be a separate paragraph that applies to inspections that don't involve written agreements, which include lower fines.

Q: Could you submit a suggested draft? ANS: We would want to work with the Department of Labor. The change of language from "shall" to "may" would help.

Q: To Mr. Jenkins: Could there be unintentional misrepresentation? ANS: Yes, I suppose so.

Deb Stone, NHID - Supports the bill. The language in this bill came from their task force on misrepresentation. The change from "shall" to "may" will give the proper discretion in setting fines. This might not make it necessary to add a separate paragraph. The word "intended" might make it difficult for the Labor Department to determine intention, which was the major reason they wanted "may" instead of "shall".

Q: Is the purpose of this legislation that your department found the current law is not working? ANS: There is intentional misrepresentation going on where employers are coercing workers to misclassify as independent contractors when they don't meet the 12 criteria.

Q: What about water cooler stories about a business that tells employees to set up LLC's, etc., in order to be classified as independent? ANS: If they don't meet the 12 criteria, they still don't qualify.

Joe Donahue - Opposes the bill. Member of fraud task force. He voted against this on the task force. The first part is definitely necessary. He has had the experience of not being able to enforce the law when there is no written contract. New Hampshire is the only state that has the problem. What they oppose is that changing from "shall" to "may", it will weaken the law. We have audits and reports that show the problem is getting worse and most states are toughening laws. The carpenters opposed written agreements, the Department of Labor testified that they didn't have staff to review thousands of agreements. They would support written agreement if the Department of Labor had a review board. In terms of fines, we're about average among the states.

Q: If the commissioner finds that an employer intended to misrepresent, could it go back to "shall"? ANS: All they have to say if they didn't know. These should be language that says "known or should have known."

Q: I think the real problem is the word "intended." ANS: I don't think so. When I submit "slam dunk" complaints, I'm told nothing can be done because there is no written agreement.

Respectfully submitted,



Rep. Mary Ann Knowles
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: 11/7/10

LOB ROOM: 307

Time Public Hearing Called to Order: 2:04

Time Adjourned: 2:56

(please circle if present)

Committee Members: Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

Bill Sponsors: Rep. Goley, Hills 8; Rep. Craig, Hills 9; Rep. Ro. Holden, Hills 7; Rep. Baroody, Hills 13; Sen. DeVries, Dist 18; Sen. Cilley, Dist 6

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① Rep. Jeff Goley - Prime Sponsor

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The reason for this change was the problem that agreement only needed to be verbal, so written contracts weren't available. This change of language will make enforcement easier.

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R: Yes.

Q: So some will be written and some verbal?

R: I don't think there's anything in statute that requires all agreements to be written.

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R: Yes.

② Martin Jenkins - Council for Dept of Labor - supports

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Joseph Donahue - Carpenter's Union

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Sub-Committee Actions

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: February 9, 2010

Subcommittee Members: Reps. Gorman, J. Knowles, and Infantine

Comments and Recommendations:

Amendments:

Sponsor: Rep. Goley OLS Document #: 2010 0374h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. J. Knowles

Seconded by Rep. Infantine

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Mary Gorman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: February 9, 2010

Subcommittee Members: Reps. Gorman, J. Knowles, and Infantine

Comments and Recommendations:

X **Amendments:**

Sponsor: Rep. Goley OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

X **Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Knowles (John)
Seconded by Rep. Infantine
Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,

Rep. Gorman
Subcommittee Chairman/Clerk

Rep. Mary Gorman

Amendment to HB 1368



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Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: January 20, 2010

Subcommittee Members: Reps. Gorman, J. Knowles, and Infantine

Comments and Recommendations: Meet again.

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Mary Gorman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: 1-20-10

Subcommittee Members:

Reps.

Gorman, J. Knowles, + Infantine

Comments and Recommendations: meet again.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.

Subcommittee Chairman/Clerk

Rep Mary Gorman

1 Workers' Compensation; Definition of "Employee." Amend RSA 281-A:2, VI(c) [to read as follows]:

(c) A written agreement signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with each of the criteria subparagraphs (b)(1)(A)-(L) is prima facie evidence that the criteria have been met. Nothing in this subparagraph shall require such an agreement to establish that the criteria have been met.

(d) If the commissioner finds that ~~[the employer's use of such written agreement was intended to misrepresent]~~ ***an employer has misrepresented*** the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500; in addition, such employer shall be assessed a civil penalty of \$100 per employee for each day of noncompliance. The fines shall may be assessed from the first day of the infraction but not to exceed one year. Notwithstanding any provision of law to the contrary, any person with control or responsibility over decisions to disburse funds and salaries and who knowingly violates the provisions of this subparagraph shall be held personally liable for payments of fines. All funds collected under this subparagraph shall be continually appropriated and deposited into a nonlapsing workers' compensation fraud fund dedicated to the investigation and compliance activities required by this section and related sections pertaining to labor and insurance law. The commissioner of labor shall appoint as many individuals as necessary to carry out the department's responsibilities under this section.

2 Effective Date. This act shall take effect January 1, 2011.

1 Workers' Compensation; Definition of "Employee." Amend RSA 281-A:2, VI(c) [to read as follows]:

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2 Effective Date. This act shall take effect January 1, 2011.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE: February 9, 2010

LOB ROOM: 307

Amendments:

Sponsor: Rep. Goley OLS Document #: 2010 0374h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTR/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. J. Knowles

Vote: 17-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. Brennan

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 17-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Mary Ann Knowles
Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1368

BILL TITLE: relative to the definition of "employee" for workers' compensation purposes.

DATE:

LOB ROOM: 307

Amendments:

Sponsor: Rep. Goley

OLS Document #: 2010-0374h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. John Knowles

Vote: (Please attach record of roll call vote.)

17-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. Brennan

Vote: (Please attach record of roll call vote.)

17-0

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

17-0

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 1368 Title: relative to the definition of "employee" for workers' compensation purposes

PH Date: 1 / 20 / 10 Exec Session Date: 2 / 9 / 10

Motion: OTP Amendment #: 2010-0374h

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P	✓	
Craig, James W		
Weed, Charles F	✓	
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J	✓	
Daniels, Gary L	✓	
Bishop, Franklin C	✓	
Bridle, Russell D	✓	
Gleason, John P		
Dumaine, Dudley D		
Richardson, Herbert D	✓	
Pellegrino, Tony J	✓	
Sedensky, John B	✓	
	17	0

Committee Report

CONSENT CALENDAR

February 10, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES to which was referred
HB1368,**

**AN ACT relative to the definition of "employee" for
workers' compensation purposes. Having considered
the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Mary J Gorman

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES
Bill Number:	HB1368
Title:	relative to the definition of "employee" for workers' compensation purposes.
Date:	February 10, 2010
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

HB 1368 states a written agreement between an employer and an employee affirms all criteria of the term "employee" have been met. This bill also states that if the commissioner of the department of labor finds an employer has misrepresented the relationship between the employer and the person providing services, penalties may be levied against the employer.

Vote 17-0.

Rep. Mary J Gorman
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB1368, relative to the definition of "employee" for workers' compensation purposes. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Mary J Gorman for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. HB 1368 states a written agreement between an employer and an employee affirms all criteria of the term "employee" have been met. This bill also states that if the commissioner of the department of labor finds an employer has misrepresented the relationship between the employer and the person providing services, penalties may be levied against the employer. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

HB 1368

OTP/A

HB 1368 states a written agreement between an employer and an employee affirms all criteria of the term "employee" have been met. This bill also states that if the commissioner of the department of labor finds an employer has misrepresented the relationship between the employer and the person providing services, penalties may be levied against the employer.

Mary Gorman

A handwritten mark, possibly initials or a signature, consisting of a vertical line with a horizontal stroke at the top and a curved line extending to the right.

COMMITTEE REPORT

COMMITTEE: LABOR Industrial and Rehabilitative Services
BILL NUMBER: HB 1368
TITLE: Relative to the definition of "employee" for workers' compensation
DATE: Feb 9, 2010 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE
 RE-REFER
 INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2010-0374h

STATEMENT OF INTENT:

HB 1368 states a written agreement between an employer and an employee affirms all criteria of the term "employee" have been met.

This bill also states that if the Commissioner of the Dept of Labor finds an employer has misrepresented the relationship between the employer and the person providing services penalties may be levied against the employer.

COMMITTEE VOTE: 17-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Rep. Mary Gorman
For the Committee