



MINISTERIAL STATEMENT

By:

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Minister for the Ministry of Economy and Labour

Independent Contractor Guidance 2023

Friday, 3rd February 2023

Good morning, **Mr. Speaker**.

I am pleased to rise today to provide to the Members of this Honourable House an overview of the Independent Contractor Guidance document that has been published by the Ministry of Economy and Labour.

Mr. Speaker, the Employment Act 2000 (the “Act”) was amended in 2021 to allow the Manager of the Labour Relations Section to publish guidance on whether a working relationship more closely resembles that of an employee than that of an independent contractor.

Mr Speaker, while the improper use of independent contractor contracts has been practiced for some time, we have noticed that since the Covid19 pandemic, employers are seeking creative ways to reduce the cost of doing business while employees are exploring work that allows them more flexibility and customization. This is resulting in an increase of non-standard work. These practices require a distinction to be made between employees and independent contractors.

Mr Speaker, the Independent Contractor Guidance lists 12 indicators that are material to differentiate employees from independent contractors. This will significantly aid employers and employees in assessing their employment

relationship, reducing the occurrence of employee benefits being compromised and lowering the occurrence of disputes being brought before the Employment and Labour Relations Tribunal.

Mr Speaker, the Independent Contractor Guidance goes into depth on what each indicator means and how it can be applied when considering the appropriate employment relationship. The 12 indicators are as follows:

1. Continuity of Work
2. Tools and Equipment
3. Integration
4. Method of Payment
5. Training
6. Profit and Loss
7. Contract Type
8. Control Over Work
9. Open Market Competition/Number of Clients
10. Benefit Responsibility
11. Business Registration
12. Termination

Mr Speaker, the misclassification of employees as independent contractors has serious economic implications and often times finds those who are misclassified earning less than what they would earn in terms of pay and benefits than if they were properly classified.

Mr Speaker, employees who are misclassified as independent contractors will lose their right to receive the statutory minimum hourly wage, which is due to take effect on 1 June 2023, as well as their legal right to receive overtime pay, vacation and public holiday pay, maternity and paternity leave, and the other various paid entitlements afforded to employees under the Employment Act 2000 or a collective bargaining agreement. Misclassified employees do not qualify for workers' compensation if they are injured on the job, they are not eligible to bargain collectively and form a bargaining unit to better their working conditions and they are fully responsible for their social insurance and health insurance payments, which are otherwise split evenly between employers and employees.

Mr Speaker, to put this into context while taking into consideration the fact that wages and benefits vary between jurisdictions, the Economic Policy Institute in the United States conducted a review in 2022 of the 11 most common misclassified categories of workers and found that a typical construction worker, classified as an independent contractor, would lose out on as much as \$16,729 per year in income and job benefits compared with what they would have earned as an employee and a typical home health aide, classified as an independent contractor, would lose out on as much as \$9,529 per year in income and job benefits compared with what they would have earned as an employee.

Mr Speaker, the Independent Contractor Guidance will be referred to by the Labour Relations Section as part of their normal investigation and mediation processes with the aim of helping parties to resolve matters amicably. Additionally, it will assist with the misclassification of employees so that persons who are entitled, are afforded the necessary protections under the Act. The Independent Contractor Guidance may also be consulted by the Employment and Labour Relations Tribunal as a part of their decision-making.

Mr. Speaker, the Independent Contractor Guidance has been a collaborative effort by the members of the Labour Advisory Council, which is a tripartite body chaired by the Minister of Economy and Labour and consisting of representatives for employers, employees and the Government.

Mr. Speaker, the Independent Contractor Guidance will come into effect on 1 April 2023. The Independent Contractor Guidance builds on the Ministry's mandate to promote labour standards and foster harmonious employment relations.

Mr. Speaker, the Ministry would like to take this opportunity to thank the Labour Advisory Committee for the work done to complete the Independent Contractor Guidance as well as the Members of this Honourable House for the opportunity to address them in this regard.

Thank you, **Mr. Speaker**.