



# COLORADO CHAMBER OF COMMERCE

## Recommended Changes to SB 207 – Unemployment Insurance

5.28.20

### Section 8-70-115(1)(c):

- By deleting the first eight of the formerly 9 factors to meet to create a rebuttable presumption of independent contractor status, it makes the establishment of the rebuttable presumption of independent contractor status subjective. This change will likely cause inconsistent determinations as to who is an employee or an independent contractor by UI Division auditors;
- This change also creates inconsistency with the current Workers' Compensation Act and Employment Security Act. For instance, a worker could be deemed an employee under the Employment Security Act, but an independent contractor under the Workers' Compensation Act—or vice-versa. That creates confusion and unworkable for businesses. **Either the person is an independent contractor or an employee – they cannot be both in the same situation.**
- Pg. 5/Lines 3-5: creates a new factor that is **vague, objectionable and will cause confusion** due to its expansion beyond employee/independent contractor definitions in other sections of Colorado law. It is even broader than elements of other more extreme state definitions across the country. This new element would make it less likely that the rebuttable presumption of independent contractor status can be established for those doing work for some companies who should qualify as an independent contractor.

**Recommendation:** Maintain the first eight factors in current Section 8-70-115(1)(c) and delete this new factor from Section 8-70-115(1)(c).

### Section 8-70-115(3.5)(b):

- Pg. 6/Lines 3-11: 8-70-115(3.5)(a) creates a consistent determination of a worker being an employee under the Wage Act and Employment Security Act, while (3.5)(b) creates an inconsistent determination under the Wage Act and Employment Security Act. **Either the person is an independent contractor or an employee – cannot be both in the same situation.**

**Recommendation:** Delete 8-70-115(3.5)(b) and revise language to read:

“8-70-115(a): If an individual or a similarly situated individual is found to be an employee or an independent contractor for the purposes of Article 4 of this Title 8, the individual or similarly situated individual will be deemed to have that same status under this Section.”

Otherwise, both new Sections 8-70-115(3.5)(a) and (b) should be deleted.

Section 8-74-102(1):

*Recommendation:* Maintain response time currently provided in statute. There may be legitimate reasons why the parties may need more than seven calendar days to respond.

Section 8-77-110:

*Recommendation:* Delete entire section. Creation of an unemployment insurance compensation program and fund for independent contractors will further exhaust the existing unemployment insurance trust fund which is paid for by Colorado employers.