

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 447**

**Representative Lampton**

**Cosponsors: Representatives Merrin, Cross, Riedel, Carfagna**

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**A BILL**

To amend section 4123.01 of the Revised Code 1  
regarding workers' compensation and employees 2  
who work from home. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4123.01 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 4123.01.** As used in this chapter: 6

(A) (1) "Employee" means: 7

(a) Every person in the service of the state, or of any 8  
county, municipal corporation, township, or school district 9  
therein, including regular members of lawfully constituted 10  
police and fire departments of municipal corporations and 11  
townships, whether paid or volunteer, and wherever serving 12  
within the state or on temporary assignment outside thereof, and 13  
executive officers of boards of education, under any appointment 14  
or contract of hire, express or implied, oral or written, 15  
including any elected official of the state, or of any county, 16  
municipal corporation, or township, or members of boards of 17  
education. 18

As used in division (A) (1) (a) of this section, the term "employee" includes the following persons when responding to an inherently dangerous situation that calls for an immediate response on the part of the person, regardless of whether the person is within the limits of the jurisdiction of the person's regular employment or voluntary service when responding, on the condition that the person responds to the situation as the person otherwise would if the person were on duty in the person's jurisdiction:

(i) Off-duty peace officers. As used in division (A) (1) (a) (i) of this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(ii) Off-duty firefighters, whether paid or volunteer, of a lawfully constituted fire department.

(iii) Off-duty first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or emergency medical technicians-paramedic, whether paid or volunteer, of an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code.

(b) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound by any such contract of hire or by any other

written contract, to pay into the state insurance fund the 49  
premiums provided by this chapter. 50

(c) Every person who performs labor or provides services 51  
pursuant to a construction contract, as defined in section 52  
4123.79 of the Revised Code, if at least ten of the following 53  
criteria apply: 54

(i) The person is required to comply with instructions 55  
from the other contracting party regarding the manner or method 56  
of performing services; 57

(ii) The person is required by the other contracting party 58  
to have particular training; 59

(iii) The person's services are integrated into the 60  
regular functioning of the other contracting party; 61

(iv) The person is required to perform the work 62  
personally; 63

(v) The person is hired, supervised, or paid by the other 64  
contracting party; 65

(vi) A continuing relationship exists between the person 66  
and the other contracting party that contemplates continuing or 67  
recurring work even if the work is not full time; 68

(vii) The person's hours of work are established by the 69  
other contracting party; 70

(viii) The person is required to devote full time to the 71  
business of the other contracting party; 72

(ix) The person is required to perform the work on the 73  
premises of the other contracting party; 74

(x) The person is required to follow the order of work set 75

by the other contracting party;	76
(xi) The person is required to make oral or written	77
reports of progress to the other contracting party;	78
(xii) The person is paid for services on a regular basis	79
such as hourly, weekly, or monthly;	80
(xiii) The person's expenses are paid for by the other	81
contracting party;	82
(xiv) The person's tools and materials are furnished by	83
the other contracting party;	84
(xv) The person is provided with the facilities used to	85
perform services;	86
(xvi) The person does not realize a profit or suffer a	87
loss as a result of the services provided;	88
(xvii) The person is not performing services for a number	89
of employers at the same time;	90
(xviii) The person does not make the same services	91
available to the general public;	92
(xix) The other contracting party has a right to discharge	93
the person;	94
(xx) The person has the right to end the relationship with	95
the other contracting party without incurring liability pursuant	96
to an employment contract or agreement.	97
Every person in the service of any independent contractor	98
or subcontractor who has failed to pay into the state insurance	99
fund the amount of premium determined and fixed by the	100
administrator of workers' compensation for the person's	101
employment or occupation or who is a self-insuring employer and	102

who has failed to pay compensation and benefits directly to the 103  
employer's injured and to the dependents of the employer's 104  
killed employees as required by section 4123.35 of the Revised 105  
Code, shall be considered as the employee of the person who has 106  
entered into a contract, whether written or verbal, with such 107  
independent contractor unless such employees or their legal 108  
representatives or beneficiaries elect, after injury or death, 109  
to regard such independent contractor as the employer. 110

(d) Every person who operates a vehicle or vessel in the 111  
performance of services for or on behalf of a motor carrier 112  
transporting property, unless all of the following factors apply 113  
to the person: 114

(i) The person owns the vehicle or vessel that is used in 115  
performing the services for or on behalf of the carrier, or the 116  
person leases the vehicle or vessel under a bona fide lease 117  
agreement that is not a temporary replacement lease agreement. 118  
For purposes of this division, a bona fide lease agreement does 119  
not include an agreement between the person and the motor 120  
carrier transporting property for which, or on whose behalf, the 121  
person provides services. 122

(ii) The person is responsible for supplying the necessary 123  
personal services to operate the vehicle or vessel used to 124  
provide the service. 125

(iii) The compensation paid to the person is based on 126  
factors related to work performed, including on a mileage-based 127  
rate or a percentage of any schedule of rates, and not solely on 128  
the basis of the hours or time expended. 129

(iv) The person substantially controls the means and 130  
manner of performing the services, in conformance with 131

regulatory requirements and specifications of the shipper.	132
(v) The person enters into a written contract with the carrier for whom the person is performing the services that describes the relationship between the person and the carrier to be that of an independent contractor and not that of an employee.	133 134 135 136 137
(vi) The person is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the person may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.	138 139 140 141 142 143 144
(vii) The person is responsible for any economic loss or economic gain from the arrangement with the carrier.	145 146
(2) "Employee" does not mean any of the following:	147
(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;	148 149 150
(b) Any officer of a family farm corporation;	151
(c) An individual incorporated as a corporation;	152
(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as an officer;	153 154 155
(e) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the	156 157 158 159

individual's employer under section 4123.15 of the Revised Code;	160
(f) (i) A qualifying employee described in division (A) (14)	161
(a) of section 5703.94 of the Revised Code when the qualifying	162
employee is performing disaster work in this state during a	163
disaster response period pursuant to a qualifying solicitation	164
received by the employee's employer;	165
(ii) A qualifying employee described in division (A) (14)	166
(b) of section 5703.94 of the Revised Code when the qualifying	167
employee is performing disaster work in this state during a	168
disaster response period on critical infrastructure owned or	169
used by the employee's employer;	170
(iii) As used in division (A) (2) (f) of this section,	171
"critical infrastructure," "disaster response period," "disaster	172
work," and "qualifying employee" have the same meanings as in	173
section 5703.94 of the Revised Code.	174
Any employer may elect to include as an "employee" within	175
this chapter, any person excluded from the definition of	176
"employee" pursuant to division (A) (1) (d) or (A) (2) (a), (b),	177
(c), or (e) of this section in accordance with rules adopted by	178
the administrator, with the advice and consent of the bureau of	179
workers' compensation board of directors. If an employer is a	180
partnership, sole proprietorship, individual incorporated as a	181
corporation, or family farm corporation, such employer may elect	182
to include as an "employee" within this chapter, any member of	183
such partnership, the owner of the sole proprietorship, the	184
individual incorporated as a corporation, or the officers of the	185
family farm corporation. Nothing in this section shall prohibit	186
a partner, sole proprietor, or any person excluded from the	187
definition of "employee" pursuant to division (A) (2) (a), (b),	188
(c), or (e) of this section from electing to be included as an	189

"employee" under this chapter in accordance with rules adopted 190  
by the administrator, with the advice and consent of the board. 191

In the event of an election, the employer or person 192  
electing coverage shall serve upon the bureau of workers' 193  
compensation written notice naming the person to be covered and 194  
include the person's remuneration for premium purposes in all 195  
future payroll reports. No partner, sole proprietor, or person 196  
excluded from the definition of "employee" pursuant to division 197  
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall 198  
receive benefits or compensation under this chapter until the 199  
bureau receives written notice of the election permitted by this 200  
section. 201

For informational purposes only, the bureau shall 202  
prescribe such language as it considers appropriate, on such of 203  
its forms as it considers appropriate, to advise employers of 204  
their right to elect to include as an "employee" within this 205  
chapter a sole proprietor, any member of a partnership, or a 206  
person excluded from the definition of "employee" under division 207  
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that 208  
they should check any health and disability insurance policy, or 209  
other form of health and disability plan or contract, presently 210  
covering them, or the purchase of which they may be considering, 211  
to determine whether such policy, plan, or contract excludes 212  
benefits for illness or injury that they might have elected to 213  
have covered by workers' compensation. 214

(B) (1) "Employer" means: 215

(a) The state, including state hospitals, each county, 216  
municipal corporation, township, school district, and hospital 217  
owned by a political subdivision or subdivisions other than the 218  
state; 219



(b) Every person, firm, professional employer 220  
organization, alternate employer organization, and private 221  
corporation, including any public service corporation, that (i) 222  
has in service one or more employees or shared employees 223  
regularly in the same business or in or about the same 224  
establishment under any contract of hire, express or implied, 225  
oral or written, or (ii) is bound by any such contract of hire 226  
or by any other written contract, to pay into the insurance fund 227  
the premiums provided by this chapter. 228

All such employers are subject to this chapter. Any member 229  
of a firm or association, who regularly performs manual labor in 230  
or about a mine, factory, or other establishment, including a 231  
household establishment, shall be considered an employee in 232  
determining whether such person, firm, or private corporation, 233  
or public service corporation, has in its service, one or more 234  
employees and the employer shall report the income derived from 235  
such labor to the bureau as part of the payroll of such 236  
employer, and such member shall thereupon be entitled to all the 237  
benefits of an employee. 238

(2) "Employer" does not include a franchisor with respect 239  
to the franchisor's relationship with a franchisee or an 240  
employee of a franchisee, unless the franchisor agrees to assume 241  
that role in writing or a court of competent jurisdiction 242  
determines that the franchisor exercises a type or degree of 243  
control over the franchisee or the franchisee's employees that 244  
is not customarily exercised by a franchisor for the purpose of 245  
protecting the franchisor's trademark, brand, or both. For 246  
purposes of this division, "franchisor" and "franchisee" have 247  
the same meanings as in 16 C.F.R. 436.1. 248

(C) "Injury" includes any injury, whether caused by 249

external accidental means or accidental in character and result, 250  
received in the course of, and arising out of, the injured 251  
employee's employment. "Injury" does not include: 252

(1) Psychiatric conditions except where the claimant's 253  
psychiatric conditions have arisen from an injury or 254  
occupational disease sustained by that claimant or where the 255  
claimant's psychiatric conditions have arisen from sexual 256  
conduct in which the claimant was forced by threat of physical 257  
harm to engage or participate; 258

(2) Injury or disability caused primarily by the natural 259  
deterioration of tissue, an organ, or part of the body; 260

(3) Injury or disability incurred in voluntary 261  
participation in an employer-sponsored recreation or fitness 262  
activity if the employee signs a waiver of the employee's right 263  
to compensation or benefits under this chapter prior to engaging 264  
in the recreation or fitness activity; 265

(4) Injury or disability sustained by an employee who 266  
performs the employee's duties in a work area that is located 267  
within the employee's home and that is separate and distinct 268  
from the location of the employer, unless all of the following 269  
apply: 270

(a) The employee's injury or disability arises out of the 271  
employee's employment. 272

(b) The employee's employment necessarily exposes the 273  
employee to conditions that substantially contribute to the risk 274  
of injury or disability. 275

(c) The injury or disability is sustained in the course of 276  
an activity undertaken by the employee for the exclusive benefit 277  
of the employer. 278

(5) A condition that pre-existed an injury unless that 279  
pre-existing condition is substantially aggravated by the 280  
injury. Such a substantial aggravation must be documented by 281  
objective diagnostic findings, objective clinical findings, or 282  
objective test results. Subjective complaints may be evidence of 283  
such a substantial aggravation. However, subjective complaints 284  
without objective diagnostic findings, objective clinical 285  
findings, or objective test results are insufficient to 286  
substantiate a substantial aggravation. 287

(D) "Child" includes a posthumous child and a child 288  
legally adopted prior to the injury. 289

(E) "Family farm corporation" means a corporation founded 290  
for the purpose of farming agricultural land in which the 291  
majority of the voting stock is held by and the majority of the 292  
stockholders are persons or the spouse of persons related to 293  
each other within the fourth degree of kinship, according to the 294  
rules of the civil law, and at least one of the related persons 295  
is residing on or actively operating the farm, and none of whose 296  
stockholders are a corporation. A family farm corporation does 297  
not cease to qualify under this division where, by reason of any 298  
devise, bequest, or the operation of the laws of descent or 299  
distribution, the ownership of shares of voting stock is 300  
transferred to another person, as long as that person is within 301  
the degree of kinship stipulated in this division. 302

(F) "Occupational disease" means a disease contracted in 303  
the course of employment, which by its causes and the 304  
characteristics of its manifestation or the condition of the 305  
employment results in a hazard which distinguishes the 306  
employment in character from employment generally, and the 307  
employment creates a risk of contracting the disease in greater 308

degree and in a different manner from the public in general. 309

(G) "Self-insuring employer" means an employer who is 310  
granted the privilege of paying compensation and benefits 311  
directly under section 4123.35 of the Revised Code, including a 312  
board of county commissioners for the sole purpose of 313  
constructing a sports facility as defined in section 307.696 of 314  
the Revised Code, provided that the electors of the county in 315  
which the sports facility is to be built have approved 316  
construction of a sports facility by ballot election no later 317  
than November 6, 1997. 318

(H) "Private employer" means an employer as defined in 319  
division (B) (1) (b) of this section. 320

(I) "Professional employer organization" has the same 321  
meaning as in section 4125.01 of the Revised Code. 322

(J) "Public employer" means an employer as defined in 323  
division (B) (1) (a) of this section. 324

(K) "Sexual conduct" means vaginal intercourse between a 325  
male and female; anal intercourse, fellatio, and cunnilingus 326  
between persons regardless of gender; and, without privilege to 327  
do so, the insertion, however slight, of any part of the body or 328  
any instrument, apparatus, or other object into the vaginal or 329  
anal cavity of another. Penetration, however slight, is 330  
sufficient to complete vaginal or anal intercourse. 331

(L) "Other-states' insurer" means an insurance company 332  
that is authorized to provide workers' compensation insurance 333  
coverage in any of the states that permit employers to obtain 334  
insurance for workers' compensation claims through insurance 335  
companies. 336

(M) "Other-states' coverage" means both of the following: 337

(1) Insurance coverage secured by an eligible employer for 338  
workers' compensation claims of employees who are in employment 339  
relationships localized in a state other than this state or 340  
those employees' dependents; 341

(2) Insurance coverage secured by an eligible employer for 342  
workers' compensation claims that arise in a state other than 343  
this state where an employer elects to obtain coverage through 344  
either the administrator or an other-states' insurer. 345

(N) "Limited other-states coverage" means insurance 346  
coverage provided by the administrator to an eligible employer 347  
for workers' compensation claims of employees who are in an 348  
employment relationship localized in this state but are 349  
temporarily working in a state other than this state, or those 350  
employees' dependents. 351

(O) "Motor carrier" has the same meaning as in section 352  
4923.01 of the Revised Code. 353

(P) "Alternate employer organization" has the same meaning 354  
as in section 4133.01 of the Revised Code. 355

**Section 2.** That existing section 4123.01 of the Revised 356  
Code is hereby repealed. 357