

INDEPENDENT CONTRACTOR/EMPLOYEE SELECTED LAWS & RULES

INDUSTRIAL INSURANCE

RCW 51.08.180

"Worker" -- Exceptions.

(1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as a separate alternative, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW [51.08.195](#): PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

(2) For the purposes of this title, any person, firm, or corporation currently engaging in a business which is registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW is not a worker when:

(a) Contracting to perform work for any contractor registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW;

(b) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(d) The work which the person, firm, or corporation has contracted to perform is:

(i) The work of a contractor as defined in RCW [18.27.010](#); or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter [19.28](#) RCW

(3) Any person, firm, or corporation registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW including those performing work for any contractor registered

under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW is a worker when the contractor supervises or controls the means by which the result is accomplished or the manner in which the work is performed.

(4) For the purposes of this title, any person participating as a driver or back-up driver in commuter ride sharing, as defined in RCW [46.74.010](#)(1), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle.

[1991 c 246 3; 1987 c 175 3; 1983 c 97 1; 1982 c 80 1; 1981 c 128 2; 1977 ex.s. c 350 15; 1961 c 23 [51.08.180](#). Prior: 1957 c 70 20; prior: (i) 1939 c 41 2, part; 1929 c 132 1, part; 1927 c 310 2, part; 1921 c 182 2, part; 1919 c 131 2, part; 1917 c 120 1, part; 1911 c 74 3, part; RRS 7675, part. (ii) 1937 c 211 2; RRS 7674-1.]

RCW 51.08.195

Employer and worker -- Alternative exception.

As a separate alternative to the definition of "employer" under RCW [51.08.070](#) and the definition of "worker" under RCW [51.08.180](#), services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

[1991 c 246 1.]

UNEMPLOYMENT INSURANCE

RCW 50.04.100

Employment.

"Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Except as provided by RCW [50.04.145](#), personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW [50.04.140](#), shall be considered employment of the employing unit: PROVIDED, HOWEVER, That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor.

[1982 1st ex.s. c 18 14; 1945 c 35 11; Rem. Supp. 1945 9998-150. Prior: 1943 c 127 13; 1941 c 253 14; 1939 c 214 19; 1937 c 162 19.]

RCW 50.04.140

Employment -- Exception tests.

Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

[1991 c 246 6; 1945 c 35 15; Rem. Supp. 1945 9998-154. Prior: 1943 c 127 13; 1941 c 253 14; 1939 c 214 16; 1937 c 162 19.]

RCW 50.04.145

Employment -- Services performed for contractor, when excluded.

The term "employment" shall not include services rendered by any person, firm, or corporation currently engaging in a business which is registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW when:

(1) Contracting to perform work for any contractor registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

- (3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business;
- (4) The work which the person, firm, or corporation has contracted to perform is:
- (a) The work of a contractor as defined in RCW [18.27.010](#); or
- (b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter [19.28](#) RCW; and
- (5) A contractor registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW does not supervise or control the means by which the result is accomplished or the manner in which the work is performed.

[1983 1st ex.s. c 23 25; 1982 1st ex.s. c 18 13.]

B&O TAXES

RCW 82.04.360

Exemptions -- Employees -- Independent contractors -- Booth renters.

- (1) This chapter shall not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.
- (2) A booth renter, as defined by *RCW [18.16.020](#), is an independent contractor for purposes of this chapter.

[1991 c 324 19; 1991 c 275 2; 1961 c 15 [82.04.360](#). Prior: 1959 c 197 20; prior: 1945 c 249, 2, part; 1943 c 156 4, part; 1941 c 178 6, part; 1939 c 225 5, part; 1937 c 227 4, part; 1935 c 180 11, part; Rem. Supp. 1945 8370-11, part.]

WAC 458-20-105 [portions omitted] Employees distinguished from persons engaging in business. (1) The Revenue Act imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees.

(2) While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the department of revenue

for a specific ruling.

(3) **Persons engaging in business.** The term "engaging in business" means the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

- (a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;
 - (b) Entitled to receive the gross income of the business or any part thereof;
 - (c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;
 - (d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;
 - (e) Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;
 - (f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;
 - (g) A party to a written contract, the intent of which establishes the person to be an independent contractor;
 - (h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).
- (4) **Employees.** The following conditions indicate that a person is an employee.

If the person:

- (a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;
- (b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;
- (c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;
- (d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

....

(6) Operators of rented or owned equipment. Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

(7) Casual laborers. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc. for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. However, refer to WAC 458-20-101 and 458-20-104 for registration and reporting requirements for such activities.

....

[Statutory Authority: RCW [82.32.300](#), 92-06-082, 458-20-105, filed 3/4/92, effective 4/4/92; 89-16-080 (Order 89-10), 458-20-105, filed 8/1/89, effective 9/1/89; Order ET 70-3, 458-20-105 (Rule 105), filed 5/29/70, effective 7/1/70.]

Prepared For: Joint Legislative Task Force on the Underground Economy in the Construction Industry September 26, 2007

*Prepared By: Joan Elgee, Office of Program Research
Page 7 of 7*