

Underground Economy in the Construction Industry Joint Task Force
Employment Definition Modification
December 13, 2007

Employment Security Department (ESD)

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~~ 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.

RCW 50.04.140, Employment — ~~Exception tests~~ for work done by independent contract.

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:~~
- (1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, including the means by which the result is accomplished or the manner in which the work is performed, both under his or her contract of service and in fact; and

- ~~(2)(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
- ~~(3)(e)~~ 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, other than that furnished by the employer for which the business has contracted to furnish services, that is eligible for a business deduction for federal income tax purposes; and
- ~~(4)(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
- ~~(5)(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 a~~ valid certificate of registration with the department of revenue, and open and active accounts with any 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)(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; and
- (7) On the effective date of the contract of service, any person, firm, or corporation engaging in work that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 must have a valid contractor registration or electrical contractor license.

~~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;~~

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- ~~(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.~~