

CHAPTER 89—S.F.No. 910

An act relating to employment; regulating the employment status of certain truckers for the purpose of unemployment compensation and workers' compensation; amending Minnesota Statutes 2008, sections 176.041, subdivision 1; 268.035, subdivision 25b; proposing coding for new law in Minnesota Statutes, chapter 176; repealing Minnesota Rules, parts 5224.0290; 5224.0291; 5224.0292.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 176.041, subdivision 1, is amended to read:

Subdivision 1. **Employments excluded.** This chapter does not apply to any of the following:

(1) a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law;

(2) a person employed by a family farm as defined by section 176.011, subdivision 11a;

(3) the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer;

(4) a sole proprietor, or the spouse, parent, and child, regardless of age, of a sole proprietor;

(5) a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business;

(6) an executive officer of a family farm corporation;

(7) an executive officer of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25 percent of the stock of the corporation;

(8) a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation;

(9) a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation who is referred to in clause (7);

(10) another farmer or a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community;

(11) a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer;

(12) persons who are independent contractors as defined by section 181.723, section 176.043, and any rules adopted by the commissioner pursuant to section 176.83 except that these exclusions do not apply to an employee of an independent contractor;

(13) an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member;

(14) a person employed as a household worker in, for, or about a private home or household who earns less than \$1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned \$1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned \$1,000 in the present quarter;

(15) persons employed by a closely held corporation who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to an officer of the corporation, who is referred to in clause (7), if the corporation files a written election with the commissioner to exclude such individuals. A written election is not required for a person who is otherwise excluded from this chapter by this section;

(16) a nonprofit association which does not pay more than \$1,000 in salary or wages in a year;

(17) persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et seq.;

(18) a manager of a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent membership interest in the limited liability company;

(19) a spouse, parent, or child, regardless of age, of a manager of a limited liability company described in clause (18);

(20) persons employed by a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to a manager of a limited liability company described in clause (18), if the company files a written election with the commissioner to exclude these persons. A written election is not required for a person who is otherwise excluded from this chapter by this section; or

(21) members of limited liability companies who satisfy the requirements of clause (12).

Sec. 2. **[176.043] TRUCKING AND MESSENGER/COURIER INDUSTRIES; INDEPENDENT CONTRACTORS.**

In the trucking and messenger/courier industries, an operator of a car, van, truck, tractor, or truck-tractor that is licensed and registered by a governmental motor vehicle agency is an employee unless each of the following factors is present, and if each factor is present, the operator is an independent contractor:

(1) the individual owns the equipment or holds it under a bona fide lease arrangement;

(2) the individual is responsible for the maintenance of the equipment;

(3) the individual is responsible for the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses. The individual may be paid the carrier's fuel surcharge and incidental costs, including, but not limited to, tolls, permits, and lumper fees;

(4) the individual is responsible for supplying the necessary personal services to operate the equipment;

(5) the individual's compensation is based on factors related to the work performed, such as a percentage of any schedule of rates, and not on the basis of the hours or time expended;

(6) the individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper; and

(7) the individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Sec. 3. Minnesota Statutes 2008, section 268.035, subdivision 25b, is amended to read:

Subd. 25b. **Trucking ~~industry/independent~~ and messenger/courier industries; independent contractors.** In the trucking ~~industry~~ and messenger/courier industries, an ~~owner-operator~~ operator of a ~~vehicle~~ car, van, truck, tractor, or truck-tractor that is licensed and registered ~~as a truck, tractor, or truck-tractor~~ by a governmental motor vehicle regulatory agency is an independent contractor, and is not considered an employee, ~~while performing services in the operation of the truck only if~~ employee unless each of the following factors is present, and if each factor is present, the operator is an independent contractor:

(1) the individual owns the equipment or holds it under a bona fide lease arrangement;

(2) the individual is responsible for the maintenance of the equipment;

(3) the individual ~~bears the principal burdens of~~ is responsible for the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses ~~while on the road.~~ The individual may be paid the carrier's fuel surcharge and incidental costs, including, but not limited to, tolls, permits, and lumper fees;

(4) the individual is responsible for supplying the necessary personal services to operate the equipment;

(5) the individual's compensation is based on factors related to the work performed, such as a percentage of any schedule of rates, and not on the basis of the hours or time expended; ~~and~~

(6) the individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee; and

(7) the individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.

Sec. 4. **REPEALER.**

Minnesota Rules, parts 5224.0290; 5224.0291; and 5224.0292, are repealed.

Presented to the governor May 13, 2009

Signed by the governor May 16, 2009, 1:43 p.m.