

**5224.0140 MUSICIAN; ORCHESTRA LEADER.**

Subpart 1. **Definition.** An orchestra leader or union contractor is the assembler or leader of a musical group that plays music in public for compensation.

Subp. 2. **Independent contractor.** An orchestra leader is an independent contractor if all of the following conditions are substantially met.

- A. The leader selects the members and rehearses and directs them.
- B. The leader holds out to the public as being able to furnish a musical organization and enter into contracts to furnish music.
- C. The leader has the primary right to control the orchestra members as to how, when, and where they work.
- D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.
- E. The leader is paid a lump sum for an engagement.
- F. The purchaser of the music deals directly with the leader.
- G. The purchaser retains only such control over the leader as to ensure the attainment of the desired result, such as the privilege of making suggestions on the type or style of music and number of musicians wanted.

Subp. 3. **Subcontractor.** Where the leader is an independent contractor, the purchaser of music is responsible for the workers' compensation coverage of group members other than the leader under Minnesota Statutes, section 176.205, unless those members are independent contractors with respect to the leader or the purchaser.

Subp. 4. **Employee.** The orchestra leader or assembler and members of the musical group are employees of the purchaser of musical services if all of the following criteria are substantially met.

- A. The purchaser hires a musician (usually called a union contractor) to assemble an orchestra to play at the purchaser's establishment. The purchaser specifies the number of musicians, the type of instruments, and the price per musician.
- B. The assembler of the group may be the orchestra leader if the purchaser designates him or her as the leader.
- C. The purchaser may accept all the musicians who have been assembled or make changes in the personnel with or without an audition.
- D. The purchaser pays for the services on an hourly basis and is responsible for the business expenses of the group.

**Statutory Authority:** *MS s 176.041; 176.83*

**History:** *10 SR 1852*

**Published Electronically:** *June 11, 2008*