

**5224.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.**

Subpart 1. **Factors.** Among the factors to be considered, in addition to factors of control, when determining if services are those of an independent contractor or employee are those listed in subparts 2 to 9.

Subp. 2. **Right to discharge.** The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Subp. 3. **Availability to public.** If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

- A. having an office and assistants;
- B. displaying a sign in front of a place of business;
- C. holding a business license;
- D. having a listing in a business directory or a business listing in a telephone directory; or
- E. advertising in a newspaper, trade journal, or magazine.

Subp. 4. **Compensation on job basis.** Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Subp. 5. **Realization of profit or loss.** Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

- A. hire, direct, and pay assistants;

- B. provide own office, equipment, materials, or other facilities for doing the work;
- C. continuing and recurring financial liabilities or obligations, relating to the work;
- D. profit or loss in the work depends upon the relationship of receipts to expenditures;
- E. expenses incurred in connection with the work are paid by the individual;
- F. specific jobs are performed for prices agreed upon in advance; and
- G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Subp. 6. **Termination.** The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for noncompletion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Subp. 7. **Substantial investment.** A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Subp. 8. **Responsibility.** If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Subp. 9. **Services fundamental to business.** Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

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

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