

1 Department of Labor and Industry

2

3 Adopted Rules Relating to Workers' Compensation; Independent

4 Contractor

5

6 Rules as Adopted

7

INDEPENDENT CONTRACTOR

8 5222.0010 PURPOSE.

9 The purpose of this chapter is to establish standards for

10 distinguishing between an employee and an independent contractor

11 for purposes of workers' compensation coverage under Minnesota

12 Statutes, section 176.012, paragraph (e). For those occupations

13 specifically discussed in parts 5222.0020 to 5222.0312, this

14 chapter establishes a "safe harbor" for assuring either

15 independent contractor or employee status in those occupations.

16 Where a worker is within the scope of the definition of a part,

17 but does not meet the safe harbor criteria for either

18 independent contractor or employee status, the determination

19 shall be made as described in part 5222.0320.

20 "Employee" as used in this chapter means a worker who is

21 not an independent contractor. The employee safe harbor

22 criteria are not intended to define "employee" under Minnesota

23 Statutes, section 176.011, subdivision 9 for any purpose other

24 than distinguishing workers who are not independent contractors.

25 5222.0020 ARTISANS.

26 Subpart 1. Definition. An artisan is a person who has

27 been trained in a mechanical art or trade. The particular skill

28 necessary in the work is acquired by attending a vocational

29 school, serving an apprenticeship, or by working as a handyman

30 or helper and learning the trade informally.

31 Artisans include bricklayers, blocklayers, cable

32 installers, carpenters, electricians, roofers, siders, painters,

33 plasterers, paperhangers, tapers, joiners, plumbers, and

34 steamfitters.

35 Subp. 2. Independent contractor. An artisan is an

1 independent contractor and not an employee if all of the
2 following criteria are substantially met.

3 A. The artisan is responsible for the final result,
4 is free to choose the means and methods for accomplishing the
5 result, and is not required to conform to fixed hours.

6 B. The artisan is free to select others to assist in
7 performing the job.

8 C. The artisan has the opportunity of making a profit
9 or suffering a loss and is not guaranteed a minimum income.

10 D. The artisan has business expenses beyond the
11 furnishing of tools, such as scaffolding, ladders, trucks,
12 equipment, and advertising.

13 E. The artisan has a substantial investment in
14 facilities or equipment.

15 F. The artisan holds himself or herself out to the
16 public as being available to perform services for others.

17 G. Payment for the work is on a job basis for a
18 complete job rather than a time basis.

19 H. The artisan agrees to provide lien waivers upon
20 completion of the job.

21 Subp. 3. **Employee.** An artisan is an employee if all of
22 the following criteria are substantially met.

23 A. The artisan is hired to do the work personally and
24 any helpers are hired, paid, and subject to control by the
25 purchaser of the artisan's services.

26 B. Work is during fixed hours established by the
27 purchaser and on a full-time basis.

28 C. The artisan is paid on an hourly, weekly, or
29 similar rate that is independent of the amount of work completed.

30 D. The artisan has no substantial investment in
31 facilities or equipment for doing the work.

32 E. Materials and equipment other than hand tools are
33 supplied by the purchaser of the artisan's services.

34 F. The artisan will not incur a loss or realize a
35 profit by exercising independent judgment in hiring helpers,
36 selecting the materials used, determining methods of work, or

1 similar matters.

2 G. If the artisan does not complete the job, the
3 artisan is not responsible for damages for noncompletion or for
4 obtaining a replacement to complete the job.

5 Subp. 4. Cooperatives. An artisan who is a member of a
6 labor cooperative or similar job-sharing entity is an employee
7 of the cooperative or entity if the artisan's investment in the
8 cooperative is less than 15 percent and advance payments based
9 on hours of work are made by the cooperative prior to completion
10 of the job.

11 5222.0030 BARBERS.

12 Subpart 1. Definition. Barbers are persons registered to
13 practice barbering pursuant to Minnesota Statutes, chapter 154.
14 A registered barber's apprentice is not an independent
15 contractor.

16 Subp. 2. Independent contractor. A barber is an
17 independent contractor if all of the following criteria are
18 substantially met.

19 A. The barber rents a barber chair from the purported
20 employer for a flat sum per week, month, or similar time basis.

21 B. All payments by customers for services are
22 retained by the barber.

23 C. The barber furnishes his or her own tools, but
24 need not furnish linens or supplies.

25 D. The purported employer does not have the right to
26 control the means and manner of the barber's performance of
27 services such as haircuts, shaves, shampoos, scalp treatments,
28 and facial massages.

29 E. A written agreement between the parties provides
30 that the barber is an independent contractor.

31 Subp. 3. Employee. A barber is an employee if all of the
32 following criteria are substantially met.

33 A. The barber is paid on a salary basis, though tips
34 may be retained by the barber, or the employer retains a set
35 percentage of the money taken in by the barber's services,

1 excluding tips.

2 B. The employer furnishes equipment and supplies
3 other than razors, combs, scissors, and similar items.

4 C. The employer furnishes uniforms if uniforms unique
5 to the employer are required.

6 D. The barber does not advertise.

7 E. The employer may terminate the barber's employment
8 for noncompliance with rules including hours of work, smoking,
9 or wasting time.

10 F. A written employment agreement states that the
11 parties are not independent contractors.

12 G. The employer has the right to control the means
13 and manner by which the barber performs services such as
14 haircuts, shaves, shampoos, scalp treatments, and facial
15 massages.

16 Subp. 4. **Factors excluded.** The fact that barber
17 associations or unions fix hours of work or other conditions of
18 business operation indicates neither employment nor independent
19 contractor status. Rules prescribed with respect to sanitary
20 conditions by the state or city health departments are not to be
21 considered in determining independent contractor or employment
22 status.

23 5222.0040 BOOKKEEPERS AND ACCOUNTANTS.

24 Subpart 1. **Definition.** A bookkeeper is an individual
25 whose work consists substantially of some or all of the
26 following: recording items in proper journals and on special
27 forms, posting ledgers, balancing books, compiling reports, and
28 otherwise keeping a complete and systematic set of records of an
29 organization's business transactions. Accountants licensed
30 under Minnesota Statutes, chapter 326 are bookkeepers for the
31 purposes of this part.

32 Subp. 2. **Independent contractor.** A bookkeeper is an
33 independent contractor if all of the following criteria are
34 substantially met.

35 A. The bookkeeper rents an office or maintains one in

1 the home.

2 B. The bookkeeper makes his or her services available
3 to the public.

4 C. The bookkeeper's services are rendered for a
5 number of clients and are compensated for on a fee basis.

6 D. The bookkeeper pays his or her own business
7 expenses, which include the cost of equipment, materials, and
8 helper's wages.

9 E. The bookkeeper is hired to accomplish a specific
10 result and is not subject to direction or control over the
11 methods or means of accomplishing it.

12 F. The bookkeeper's services are not performed on the
13 premises of the purchaser of the services.

14 Subp. 3. **Employee.** A bookkeeper is an employee if all of
15 the following criteria are substantially met.

16 A. The bookkeeper performs services at regular
17 intervals for a single business concern for a fixed salary.

18 B. The bookkeeper works on the employer's premises
19 with the necessary supplies and office help furnished.

20 C. The bookkeeper does not make his or her services
21 available to the public, and does not maintain an office of his
22 or her own.

23 D. The bookkeeper works during fixed hours and enjoys
24 the usual privileges extended by an employer to employees
25 including paid vacations, sick benefits, or bonuses.

26 E. The bookkeeper's services are in connection with a
27 system of bookkeeping or accounting adopted by the employer.

28 F. The bookkeeper is subject to direction and control
29 of the employer, although he or she may not be closely
30 supervised because of the skill required to do the work.

31 5222.0050 BULK OIL PLANT OPERATORS.

32 Subpart 1. **Definition.** A bulk plant operator is an
33 individual who:

34 A. distributes the products of firms engaged in the
35 oil business;

1 B. receives the oil products from the firm with which
2 he or she contracts and delivers them to the retailers in his or
3 her territory; and

4 C. collects money for the products from customers and
5 forwards it to the firm.

6 Subp. 2. **Independent contractor.** A bulk oil plant
7 operator is an independent contractor if all of the following
8 criteria are substantially met.

9 A. The operator is in complete charge of the entire
10 plant.

11 B. The operator's contract with an oil firm provides
12 that the operator will:

13 (1) sell the firm's petroleum products on a
14 consignment basis and account for all money collected;

15 (2) sell the products within a general territory
16 at prices set by the firm;

17 (3) bear all expenses except freight on the
18 products consigned;

19 (4) furnish trucks and other equipment; and

20 (5) hire, pay, and assume full responsibility for
21 all necessary assistants.

22 C. The operator advertises the firms' products at his
23 or her own expense.

24 D. The operator fixes the hours and days the plant
25 remains open, and hires, pays, and controls the employees.

26 Subp. 3. **Employee.** A bulk oil plant operator is an
27 employee if all of the following criteria are substantially met.

28 A. The operator does not have an investment in
29 capital assets and is paid on a salary basis.

30 B. The operator is required to work fixed hours or
31 full time.

32 C. The operator is included in the oil firm's
33 employee benefits plans.

34 D. The operator is required to comply with
35 instructions given by the firm.

36 E. The operator is not personally obligated to pay

1 wages or does not assist in paying the truck or plant
2 maintenance expenses.

3 F. The operator is hired to manage the plant on a
4 salary basis under instructions on the method and manner of
5 doing the work.

6 5222.0060 COLLECTORS.

7 Subpart 1. Definition. A collector is an individual who
8 collects, accepts, or encourages payments from the customers of
9 a business for merchandise sold or services rendered by that
10 business.

11 Subp. 2. Independent contractor. A collector is an
12 independent contractor when the criteria of item A or B is
13 substantially met.

14 A. If the collector is a door-to-door or telephone
15 collector, he or she:

16 (1) is assigned a specific territory and
17 furnished lists of people from whom to collect;

18 (2) is not required to conform to fixed hours,
19 devote any particular amount of time to the business, or produce
20 a minimum volume of collections;

21 (3) is required to cover the territory regularly,
22 but works out a schedule of contacts;

23 (4) reports to the office only to turn in
24 collections and to get new lists;

25 (5) receives a fixed percentage of the
26 collections made, out of which are paid all expenses connected
27 with the work;

28 (6) is not guaranteed a minimum income; and

29 (7) is free to engage in other employment,
30 including collecting accounts for other firms.

31 B. The collector accepts payment of bills from the
32 customers of a third party on the collector's premises and:

33 (1) bills can be paid at any and all times the
34 collector's premises is open for business;

35 (2) the collector is not required to be present

1 if someone is on the premises to receive payments;

2 (3) the collector is not required to conform to
3 fixed hours, or to devote any particular amount of time to the
4 third party's business, or to give preference to the third
5 party's customers;

6 (4) the collector deposits all money collected in
7 a bank and periodically forwards to the third party copies of
8 bank deposit receipts, and complaint forms from customers;

9 (5) the third party furnishes the collector with
10 the necessary business forms, postage, and stationery;

11 (6) the collector is required to purchase a
12 surety bond;

13 (7) the third party pays a salary for the
14 collection services or the collector may receive a percentage of
15 the money collected;

16 (8) the collector is not trained in the work or
17 required to follow prescribed routines; and

18 (9) the collector is free to conduct private
19 business activities in addition to the collection services.

20 Subp. 3. **Employee.** A collector is an employee if all of
21 the following are substantially met.

22 A. The services of the collector are retained to
23 further the employer's business.

24 B. The collector is required to perform services
25 pursuant to schedules established by the employer.

26 C. The employer has first call on the collector's
27 time and efforts.

28 D. The collector has no significant business expenses
29 or investment in the business.

30 E. The collector is paid on a commission or salary
31 basis.

32 F. The employer has the right to establish the means
33 and methods used in collecting.

34 G. The employer has the right to interfere with or
35 set the order of the services.

36 H. The collector must report at the firm's office

1 regularly for conferences, training, or instructions.

2 I. The hiring of helpers or substitutes is not
3 permitted.

4 J. The grounds for termination are not limited to
5 failure to meet production quotas.

6 5222.0070 CONSULTANTS.

7 Subpart 1. **Definition.** A consultant is one who confers
8 with and advises people on matters within the particular field
9 in which he or she specializes. The consultant has developed a
10 peculiar knowledge or special skill of a professional or
11 semiprofessional nature through extensive training and education
12 or through wide experience in a particular occupation.

13 Subp. 2. **Independent contractor.** A consultant is an
14 independent contractor if all of the following criteria are
15 substantially met.

16 A. The consultant rents an office or offices at home.

17 B. The consultant advertises in newspapers or trade
18 journals, or maintains business listings, or otherwise holds
19 himself or herself out to the public as being available for a
20 particular type of service.

21 C. The consultant is free to hire clerical help and
22 assistants.

23 D. The consultant's success in the business world is
24 dependent entirely on personal efforts and the demand by the
25 public for the services.

26 E. The consultant operates under an arrangement where
27 for a set fee technical advice or assistance is given.

28 F. The consultant's contract of service is for a
29 specified period of time or specific purpose.

30 G. The consultant is free to work for others at the
31 same time.

32 H. The consultant is not required to observe regular
33 hours of work either at the firm's offices or at home.

34 I. The consultant agrees only to be available for
35 conferences and consultations at the request of the firm or, as

1 in some cases, to perform services on a specified minimum number
2 of days.

3 J. The consultant makes no regular reports and is not
4 required to attend regular conferences with members of the firm.

5 K. The consultant is not subject to control or
6 supervision, but is given a free hand in doing work.

7 L. The consultant is employed to do a specific job
8 and those who employ the consultant are interested only in the
9 result accomplished and not in the manner and means of
10 accomplishing it.

11 Subp. 3. **Employee.** A consultant is an employee when all
12 the following criteria are substantially met.

13 A. The consultant is retained for services which
14 further the employer's business.

15 B. The consultant is required to perform services
16 personally.

17 C. The consultant's services are not available to the
18 public.

19 D. The consultant has no investment or business
20 expense.

21 E. The consultant provides recurring, rather than
22 sporadic or infrequent, services.

23 F. The employer has the right of first call on the
24 services of the consultant.

25 G. The consultant is required to report on the
26 progress of assignments.

27 H. Either party has the right to end the relationship
28 at any time.

29 I. The consultant receives a fixed salary determined
30 on a weekly, monthly, annual, or similar basis.

31 J. The consultant cannot realize a profit or loss
32 from the services.

33 5222.0080 DOMESTIC SERVICE.

34 Subpart 1. **Definition.** Domestic service means household
35 services such as housecleaning, meal preparation, or invalid

1 companionship or care.

2 Subp. 2. **Independent contractor.** A person providing
3 domestic services is an independent contractor if all of the
4 following criteria are substantially met.

5 A. The service is performed in connection with some
6 episode in the life of the purported employer's family, such as
7 an illness of short duration, preparation for a wedding, the
8 birth of a child, or other episode of limited duration that
9 indicates an engagement to accomplish a specific job.

10 B. The domestic is free to work for others.

11 C. The domestic may hire helpers to complete the job.

12 D. The domestic is paid on a job basis rather than an
13 hourly basis.

14 Subp. 3. **Employee.** A person providing domestic services
15 is an employee if all of the following factors are substantially
16 met.

17 A. The parties are not members of the same household
18 or immediate family.

19 B. The services are performed regularly and over a
20 considerable period of time.

21 C. The domestic received at least \$500 as wages from
22 the employer for any three-month period during the preceding 12
23 months. This factor is alone sufficient to establish the
24 employment relationship under Minnesota Statutes, section
25 176.041, subdivision 1.

26 D. The domestic is not claimed as a dependent for
27 income tax purposes.

28 E. The domestic is paid on an hourly, weekly, or
29 similar time basis.

30 F. The domestic does not contribute to the employer's
31 household expenses.

32 5222.0090 BABYSITTERS.

33 Subpart 1. **Definition.** Babysitters are individuals who
34 provide childcare services to parents and are not licensed to
35 operate day care centers under Minnesota Statutes, chapter 245.

1 Subparts 2 and 3 are applicable only if the threshold
2 requirements of Minnesota Statutes, section 176.041, subdivision
3 1, have been met.

4 Subp. 2. **Independent contractor.** A babysitter is an
5 independent contractor if all of the following criteria are
6 substantially met.

7 A. The babysitter takes care of another's child in
8 the babysitter's own home or other premises under the
9 babysitter's control.

10 B. The instructions given to the babysitter by the
11 parents are general in nature, relating to matters of diet,
12 health, rest, special foods to be given to the child, and who to
13 contact in an emergency.

14 C. The babysitter is allowed to exercise judgment on
15 matters as to the amount of time and attention the child
16 requires, the types of meals to serve, and the manner of coping
17 with situations which may arise.

18 D. The babysitter is free to perform household chores
19 when the child does not require personal attention.

20 Subp. 3. **Employee.** A babysitter is an employee if all of
21 the following criteria are substantially met.

22 A. The babysitter performs childcare services in the
23 home of the child's parents.

24 B. The babysitter has been engaged to devote services
25 exclusively to the performance of the employer's work.

26 C. The babysitter is given instructions regarding
27 such matters as the amount of time and attention the child
28 requires, the types of meals to serve, and the manner of coping
29 with situations that may arise.

30 Subp. 4. **Babysitter services contracted through agencies.**
31 A babysitter is an employee of an agency in the business of
32 supplying names of babysitters if all of the following criteria
33 are substantially met.

34 A. The agency maintains a register of names and
35 addresses of individuals whom the agency determines are
36 qualified to perform babysitter services. The agency advertises

1 and otherwise holds itself out to the public as being engaged in
2 the business of furnishing a babysitter service.

3 B. The agency fixes the fee to be charged for the
4 services and notifies the babysitter where to report and the
5 hours to be worked.

6 C. The babysitter pays the agency a specified amount
7 or a percentage of the wages. Appearance and the performance of
8 services must be guided by standards and rules issued by the
9 agency.

10 D. The babysitter must notify the agency when not
11 available for an assignment and usually agrees to restrict work
12 to that furnished by the agency.

13 E. Any complaints as to the quality of the services
14 are made by the parents to the agency, and the agency may remove
15 the babysitter's name from its register.

16 5222.0100 INDUSTRIAL HOMEWORKERS.

17 Subpart 1. Definition. Industrial homeworkers are persons
18 who work in their own homes or workshops on the manufacture or
19 assembly of articles from materials supplied by the purchaser of
20 their services. Services provided by industrial homeworkers
21 include typing of envelopes and the manufacture, alteration, or
22 finishing of gloves, slippers, bedspreads, slipcovers, pottery,
23 boxes, toys, or similar items.

24 Subp. 2. Independent contractor. An industrial homemaker
25 is an independent contractor when all the following criteria are
26 substantially met.

27 A. The homemaker works under agreements that only
28 require the completion of assignments according to
29 specifications and within designated times.

30 B. The homemaker is furnished materials by the firm
31 and, in accordance with a pattern or general instructions, turns
32 out a finished product which measures up to the firm's standards.

33 C. The completed products are paid for on a piecework
34 basis.

35 D. There is no requirement that the homemaker give

1 preference to the firm's work, although the homemaker is
2 expected to complete assignments within a specified time.

3 E. The homemaker may work for others; however, in
4 many cases, the amount of work furnished by one firm keeps the
5 worker busy full time.

6 F. Unsatisfactory work is done over without pay.

7 G. Set hours of work are not prescribed by the firm,
8 nor is the work supervised.

9 Subp. 3. **Employee.** A homemaker is an employee if all of
10 the following criteria are substantially met.

11 A. The services of the homemaker are closely
12 integrated into the business of the firm that employs the worker.

13 B. The homemaker is subject to virtually the same
14 set of controls as employees who work on the firm's premises.

15 C. The homemaker uses his or her own small hand
16 tools, but large tools or heavy equipment is furnished by the
17 firm.

18 D. The homemaker works or is paid on an hourly basis
19 and renders personal services of a recurring nature.

20 E. The homemaker is given detailed instructions or
21 training in the work and is required to change the work plans
22 and the order of services when requested.

23 F. Although there is usually no direct supervision
24 over the services, the firm checks the finished product and has
25 the right to change or direct the method of operation if the
26 completed article is not satisfactory.

27 G. The homemaker is required to report on progress
28 periodically.

29 H. The relationship is terminable by either party,
30 with or without cause prior to completion of a project without
31 incurring liability for damages for noncompletion.

32 I. The employer may change the homemaker's work
33 assignment.

34 5222.0110 LABORERS.

35 Subpart 1. **Definition.** Laborers are people whose work

1 usually requires strength rather than skill, such as laborers,
2 char-women, coal hustlers, gardeners, yard maintenance workers,
3 landscaping and planting workers, tree trimmers, handy men,
4 janitors, odd-job men, porters, window washers, and other
5 unskilled workers.

6 Subp. 2. **Independent contractor.** The laborer is an
7 independent contractor if all of the following criteria are
8 substantially met.

9 A. The laborer generally must use business judgment
10 to earn a livelihood. The laborer's success or failure depends
11 on how assistants are managed, the protection of investment
12 through proper care of tools and equipment, and the reputation
13 established as a result of methods of doing business.

14 B. The services need not be performed personally.

15 C. The laborer holds himself or herself out to the
16 public as available for furnishing a certain type of service on
17 a job basis.

18 D. The laborer is free to hire assistants and the
19 assistants are the laborer's own responsibility, that is, the
20 laborer directs them, pays them, and is liable for the payment
21 of taxes on their wages.

22 E. The laborer furnishes tools.

23 F. The laborer obtains work by recommendation,
24 advertising in newspapers, or maintaining a business listing in
25 a telephone or service directory.

26 G. The laborer is responsible only for completion of
27 the job within a certain time and is free to use personal
28 methods and means for doing the work.

29 H. The laborer agrees to provide lien waivers upon
30 completion of the job.

31 Subp. 3. **Employee.** A laborer is an employee if all of the
32 following criteria are substantially met.

33 A. The services must be performed personally.

34 B. The laborer works on employer premises or at
35 locations assigned by the employer, at specified times, and with
36 tools and facilities furnished by the employer. The services

1 may be provided on a permanent, recurring, or itinerant basis.

2 C. Pay is computed on a time rather than a lump-sum
3 basis.

4 D. The employer has the right to stop the laborer on
5 one job and start on another, to speed up or slow down the
6 worker, and to express dissatisfaction with the work and to have
7 it redone.

8 E. The laborer is not responsible for damages for
9 noncompletion of the work. If the laborer quits prior to
10 completing the job, the laborer is not responsible for finding a
11 replacement.

12 5222.0120 MUSICIANS; GENERAL.

13 The status of musicians or groups in parts 5222.0120 to
14 5222.0140 is not affected by the fact that an American
15 Federation of Musicians Form B Contract, to which the leader is
16 a party, purports to make the purchaser their employer. The
17 actual relationship, rather than the terms of the contract,
18 controls.

19 5222.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

20 Subpart 1. Definition. A cooperative orchestra is a
21 musical group operated on a cooperative or partnership basis.
22 All of the members have a voice in determining the membership,
23 the engagements to be accepted, the division of the money
24 received, and all other phases of the orchestra's operations.
25 By common consent of the members one of the group may be
26 designated as a leader whose duties are to act as spokesperson
27 for the group and to negotiate engagements in the orchestra's
28 name. A business manager or set manager or other nonplaying
29 member may be a member of a cooperative orchestra.

30 Subp. 2. Independent contractor. All the members,
31 including the leader, of an orchestra are independent
32 contractors if all of the following criteria are met.

33 A. Payment is not on an hourly basis. Proceeds from
34 engagements are used to pay expenses and the remainder is
35 distributed as determined by members.

1 B. The group is free to work for other purchasers of
2 its services.

3 C. The purchaser does not have the right to discharge
4 a member of the group, or to dictate the style or manner of
5 playing the music.

6 D. The group may be liable for damages for
7 nonperformance if it quits prior to completing its engagement
8 with a purchaser.

9 Subp. 3. **Employee.** Members of a cooperative orchestra are
10 employees if all the following criteria are substantially met.

11 A. The individuality of the orchestra is subordinated
12 to the enhancement of the purchaser's reputation.

13 B. The work relationship is not short term but is of
14 a continuing nature.

15 C. The purchaser has the right to discharge the
16 leader or any of the orchestra members, to change the style or
17 type of music, to have first call on the services, and to
18 restrict the orchestra's outside activities.

19 D. The purchaser pays the members on an hourly or
20 time basis and bears the expenses of the orchestra.

21 5222.0140 MUSICIAN; ORCHESTRA LEADER.

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

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

28 A. The leader selects the members and rehearses and
29 directs them.

30 B. The leader holds out to the public as being able to
31 furnish a musical organization and enter into contracts to
32 furnish music.

33 C. The leader has the primary right to control the
34 orchestra members as to how, when, and where they work.

35 D. The leader is charged with all expenses the

1 orchestra incurs, and, after paying expenses and the salaries or
2 hourly wages of the other members, suffers a loss or realizes a
3 profit from the undertaking.

4 E. The leader is paid a lump sum for an engagement.

5 F. The purchaser of the music deals directly with the
6 leader.

7 G. The purchaser retains only such control over the
8 leader as to ensure the attainment of the desired result, such
9 as the privilege of making suggestions on the type or style of
10 music and number of musicians wanted.

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

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

21 A. The purchaser hires a musician (usually called a
22 union contractor) to assemble an orchestra to play at the
23 purchaser's establishment. The purchaser specifies the number
24 of musicians, the type of instruments, and the price per
25 musician.

26 B. The assembler of the group may be the orchestra
27 leader if the purchaser designates him or her as the leader.

28 C. The purchaser may accept all the musicians who
29 have been assembled or make changes in the personnel with or
30 without an audition.

31 D. The purchaser pays for the services on an hourly
32 basis and is responsible for the business expenses of the group.

33 5222.0150 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S
34 REPRESENTATIVES; GENERAL.

35 The following factors, taken together, are not sufficient

1 to establish an employment relationship for an outside
2 commission salesperson or manufacturer's representative under
3 parts 5222.0160 to 5222.00180 territorial restrictions, fixing
4 of sales prices and terms by the companies, the furnishing of
5 leads, working off premises of the employer, and requirements
6 that the salesmen investigate customers' complaints, collect
7 delinquent accounts, and refrain from selling for competitors.

8 5222.0160 TRAVELING SALESPEOPLE.

9 Subpart 1. **Definition.** A traveling salesperson is
10 associated with a manufacturer or distributor whose products the
11 salesperson sells directly to wholesalers or retailers. The
12 salesperson is assigned to territories and furnished with price
13 lists and samples or descriptions of the merchandise to be
14 sold. The salesperson is required to sell the merchandise at
15 prices set by the firm and the firm reserves the right to accept
16 or reject orders. The firm fills the orders by shipping
17 directly to the customers and billing the customers directly.
18 The salesperson receives compensation from the firm in the form
19 of a percentage of the price the customers pay for the
20 merchandise. The salesperson may be required to work full time,
21 to not work for competitors, or to produce a certain amount of
22 business regularly.

23 Subp. 2. **Independent contractor.** A traveling salesperson
24 is an independent contractor if all the following conditions are
25 substantially met.

26 A. The salesperson is free to solicit when, where,
27 and how he or she pleases.

28 B. The salesperson chooses working hours and schedule
29 of calls.

30 C. The salesperson chooses his or her own means of
31 travel and is responsible for the costs of travel.

32 D. The salesperson pays his or her own expenses.

33 Subp. 3. **Employee.** A traveling salesperson is an employee
34 if all the following conditions are substantially met.

35 A. The salesperson is required to appear at or report

1 to the firm's offices regularly.

2 B. The salesperson must work during fixed hours or at
3 certain times.

4 C. The salesperson must follow and report on leads.

5 D. The salesperson is required to take part in sales
6 meetings or training courses.

7 E. The salesperson is required to canvass territory
8 at regular intervals.

9 F. The firm is dependent principally on the services
10 of traveling salespersons for the disposition of its merchandise.

11 5222.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

12 Subpart 1. Definition. A house-to-house commission
13 salesperson sells door-to-door at retail prices to the customer.
14 The salesperson does not purchase stock at wholesale, maintain
15 that stock for resale, or retain the risk of loss if the stock
16 is not sold.

17 Subp. 2. Independent contractor. A house-to-house
18 commission salesperson is an independent contractor if all of
19 the following criteria are substantially met.

20 A. If assigned to territories, the salesperson is not
21 granted exclusive rights to them.

22 B. The salesperson is not required to canvass his or
23 her territories within any specified time or to work during
24 fixed hours or at certain times.

25 C. The salesperson receives no training, is not
26 required to follow an established routine or schedule, and
27 devises his or her own methods and means of selling.

28 D. The salesperson pays his or her own business
29 expenses.

30 E. The salesperson is not required to produce any
31 minimum volume of business or follow leads furnished by the
32 company.

33 Subp. 3. Employee. A house-to-house commission
34 salesperson is an employee if all of the following criteria are
35 substantially met.

1 A. The salesperson works for only one company and on
2 a full-time basis.

3 B. The services of the salesperson are an important
4 part of the company's business.

5 C. Although the salesperson may not be required to
6 report to the company's office at regular intervals, he or she
7 often receives leads and instructions through the mail which
8 must be followed.

9 D. The salesperson is required to file regularly a
10 report of activities with the company.

11 E. The salesperson is required to canvass his or her
12 territory regularly.

13 F. The salesperson is required to attend sales
14 meetings or take part in training courses.

15 G. The salesperson may be visited by a sales manager
16 or supervisor who instructs and helps in developing sales
17 techniques and other matters.

18 H. The salesperson is expected to produce a certain
19 amount of business to continue the relationship.

20 5222.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

21 Subpart 1. Definition. A house-to-house dealer
22 salesperson buys stocks of commodities at wholesale from a
23 company and sells them at retail. In other respects, the dealer
24 is similar to ordinary retail merchants and house-to-house
25 commission salespeople.

26 Subp. 2. Independent contractor. A dealer is an
27 independent contractor if all of the following criteria are
28 substantially met.

29 A. The dealer is not required to work during fixed
30 hours or at certain times, to follow any particular routes or
31 schedules or to report on his or her activities.

32 B. The dealer keeps substantial inventories and has
33 automobiles or trucks to deliver merchandise.

34 C. The dealer may employ others.

35 D. Compliance with suggestions or attendance at

1 salesmanship meetings are optional with the dealers.

2 E. The dealer is not required to solicit prospective
3 purchasers identified by the company.

4 F. The dealer chooses working hours and methods of
5 solicitation.

6 G. The dealer pays business expenses and, by selling
7 on credit, takes a risk of loss.

8 H. The dealer is dependent for a livelihood on
9 personal efforts and ingenuity in establishing clientele and
10 good reputations.

11 Subp. 3. **Employee.** A dealer is an employee if all of the
12 following criteria are substantially met.

13 A. The dealer must report regularly on sales,
14 prospects, and work activities.

15 B. The dealer must report regularly for sales
16 meetings and pep talks.

17 C. Although not usually required to work during hours
18 fixed by the firm, the dealer is expected to meet a certain
19 quota.

20 D. The dealer is restricted from selling on credit
21 and must abide by prices set by the company.

22 E. Merchandise may be returned to company with no
23 loss to the dealer.

24 F. The dealer is furnished leads and required to
25 follow-up and report.

26 G. The dealer is required to concentrate on certain
27 products listed as "specials" and follow schedules or routes
28 worked out by the company.

29 H. If sales fall off, a manager or other company
30 representative investigates and instructs the dealer how to
31 increase sales.

32 I. Helpers may be provided by the company for dealers
33 who maintain large volumes of sales.

34 J. The relationship is terminable by either party on
35 short notice and without liability to the employee for
36 noncompletion.

1 K. Where the dealer trains others, the dealer is paid
2 and may be elevated to a managership.

3 5222.0190 AGENT DRIVERS.

4 Subpart 1. **Definition.** An agent driver is a salesperson
5 who drives a truck in selling and delivering bread, milk, meat,
6 beverages, laundry, dry-cleaning, or similar services. The
7 driver may sell to consumers at retail prices or at wholesale to
8 retailers.

9 Subp. 2. **Independent contractor.** An agent driver is an
10 independent contractor if all of the following criteria are
11 substantially met.

12 A. The driver does not contract with the firm to
13 render personal services but only to buy a certain amount of a
14 firm's products regularly.

15 B. The driver may hire and pay helpers or use
16 substitutes.

17 C. Although the driver may work full time, the driver
18 does so by choice; and selects working hours.

19 D. The driver selects customers, sets prices, and
20 often sells on credit.

21 E. The driver pays truck maintenance costs and other
22 business expenses.

23 F. The driver cannot return unsold products to the
24 firm.

25 G. Either party may terminate the relationship at any
26 time without incurring liability.

27 Subp. 3. **Employee.** An agent driver is an employee if all
28 the following criteria are substantially met.

29 A. The driver is assigned a route and required to
30 cover it at regular intervals.

31 B. Helpers or substitutes are not permitted.

32 C. Prices are set by the company.

33 D. The driver cannot handle competing lines.

34 E. The driver is required to keep reports of sales
35 and other matters.

1 F. The driver collects from customers and turns money
2 over to the company.

3 G. The driver has no authority to determine whether
4 sales may be made on credit.

5 H. The driver reports to the company office at
6 specified times to load trucks, return unsold goods, and report
7 on activities as requested.

8 I. The driver is required to follow leads.

9 J. The driver is expected to solicit new customers
10 and adjust complaints.

11 K. The driver may quit or a firm may fire the driver
12 on short notice, and neither is liable for damages for
13 noncompletion.

14 L. The driver receives paid vacation, sick benefits,
15 or other similar benefits offered to nondriver employees of the
16 firm.

17 5222.0200 PHOTOGRAPHERS' MODELS.

18 Subpart 1. **Definition.** A photographer's model is a
19 professional who poses for photographs that are used for
20 commercial purposes. The photographs are reproduced and appear
21 in magazines, newspapers, or similar media to aid in advertising
22 commercial products. The model is knowledgeable or trained in
23 such subjects as the art of make-up, fashion, hairstyling,
24 acting, and posture.

25 Subp. 2. **Independent contractor.** A photographer's model
26 is an independent contractor if all of the following criteria
27 are substantially met.

28 A. The model engages a booking agent for a certain
29 compensation, usually ten percent of the model's fees. The
30 agent makes and arranges appointments for the model.

31 B. Fees are fixed by the agent, usually on an hourly
32 basis.

33 C. The model reserves the right to limit the time or
34 period of work and the right to work only during certain hours.

35 D. The model releases property rights in each

1 specific photograph that is to be used commercially.

2 E. The model supplies his or her own wardrobes
3 appropriate to the roles he or she is engaged to portray.

4 F. The model is free to pose for anyone who desires
5 his or her services.

6 G. The model is not engaged on a permanent or
7 periodic basis but solely for specific jobs and the model
8 reserves the right to cancel bookings made by his or her agents.

9 H. The creation and enactment of the roles assigned
10 them are left to the models' own discretion and initiative.

11 I. The model is free to use his or her skill and
12 training in other fields of business activity, such as radio,
13 movie shorts, fashion shows, and television shows.

14 Subp. 3. **Employee.** A photographer's model is an employee
15 if all of the following criteria are substantially met.

16 A. The model works for only one or two photographers
17 or firms and is paid a salary or guaranteed minimum wage to work
18 during fixed hours on the employer's premises.

19 B. The model is required to conform to instructions
20 or suggestions on, among others, costume, coiffure, general
21 make-up, posture, or the position and expression to assume in an
22 assigned role.

23 C. The model is paid a salary for first call on his
24 or her services and on a full-time basis or part-time basis.

25 D. The work is performed mostly on company premises
26 and is done in accordance with a supervisor's or manager's views
27 on the best method of illustrating the good points of the
28 garments or other products being modeled.

29 E. Either party may terminate the relationship at any
30 time.

31 5222.0210 PROFESSIONAL PERSONS.

32 Subpart 1. **Definition.** A professional is a person in an
33 occupation that requires education equivalent to college
34 graduation or beyond and involves compliance with professional
35 and statutory licensing or registration standards before the

1 individual can practice. The professional field includes
2 architects, attorneys, certified public accountants, and
3 engineers.

4 Subp. 2. **Independent contractor.** A professional is an
5 independent contractor when all of the following criteria are
6 substantially met.

7 A. The professional sets up his or her own business
8 office.

9 B. The professional hires and directs assistants or
10 helpers.

11 C. The professional pays all expenses in connection
12 with the business.

13 D. The professional offers services to the public.

14 E. The professional works at hours of his or her own
15 choice.

16 F. The professional is dependent for a livelihood
17 upon the amount of time, energy, and ingenuity applied to the
18 work.

19 Subp. 3. **Employee.** A professional is an employee if all
20 of the following criteria are substantially met.

21 A. The professional subordinates activities to the
22 interests of the employer by working under conditions that make
23 the professional's services an integral part of another's
24 business.

25 B. The professional works when and where a firm
26 dictates.

27 C. The professional is furnished an office and office
28 facilities, and business expenses are met by the firm.

29 D. The professional is paid a fixed salary determined
30 on a weekly, monthly, annual, or similar basis.

31 E. The professional's services are subject to
32 supervision and review.

33 F. The professional cannot hire a substitute or
34 helper.

35 G. The professional may be discharged at will and has
36 the right to terminate the relationship at any time without

1 liability.

2 H. The professional incurs no expenses nor make any
3 investment.

4 I. The relationship is continuing.

5 5222.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL
6 FIRMS.

7 Subpart 1. Definition. Doctors are persons whose work
8 requires licensure pursuant to Minnesota Statutes, section
9 147.02.

10 Subp. 2. Independent contractor. Doctors who, in addition
11 to their private practices, enter into arrangements with
12 industrial firms to examine and treat the firm's employees on a
13 part-time basis, are independent contractors if all of the
14 following criteria are met.

15 A. The firm is interested in securing a medical
16 service rather than the personal service of the doctor and an
17 employment relationship is not contemplated under the terms of
18 the agreement between the parties. The doctor, in effect,
19 accepts the firm as an additional client in the doctor's private
20 practice.

21 B. The doctor has the right to leave the firm's
22 premises during working hours if an emergency arises in private
23 practice.

24 C. The doctor has the right to send a substitute to
25 perform the services.

26 D. The doctor does not have the right to terminate
27 the relationship on short notice.

28 E. Direct supervision and control over the services
29 were not contemplated by the parties to the agreement.

30 Subp. 3. Employees. Doctors described in subpart 1 are
31 employees if all of the following criteria are substantially met.

32 A. The doctor's services are materially integrated
33 into the operating organization of the firm.

34 B. The doctor performs services of a substantial
35 nature for the firm on a regular and continuing basis.

1 C. The doctor is subject to supervision and control
2 by the firm to the extent necessary to require compliance with
3 its general policies and procedures.

4 D. The doctor is accorded the rights and privileges
5 that the firm extends to its employees generally.

6 Subp. 4. Definition of factors. This subpart explains the
7 factors listed in subpart 3.

8 A. Materially integrated is determined by factors
9 such as:

10 (1) the payment of a salary or fixed rate of pay
11 as compared to remuneration on a fee basis;

12 (2) a contract term indicating a mutual intention
13 to create an employer and employee relationship;

14 (3) the firm engages the services of a substitute
15 in the event of the doctor's absence;

16 (4) the remuneration is reported as wages for
17 social security purposes; and

18 (5) the doctor, for income tax purposes, reported
19 the remuneration as wages.

20 B. Regular and continuing basis means agreement to a
21 schedule of definite and fixed hours of service and the
22 requirement to follow the schedule without substantial deviation.

23 C. Compliance with policies and procedures exists
24 where the methods, routines, and procedures followed by the
25 doctor are subject to supervision. The supervision may be of
26 varying degree and nature, for example, supervision exercised by
27 a medical director may include somewhat detailed control over
28 the physician's medical routines where the supervision exercised
29 by a hospital administrator may lay less emphasis on this
30 aspect. However, the factor of compliance is met where the
31 physician is required to follow the employer's rules regarding
32 the physician's methods of operation generally, including the
33 obligation to treat assigned patients, the report the physician
34 must submit, the priorities the physician must follow both
35 medically and administratively, and the standards the physician
36 must maintain regarding equipment and cleanliness.

1 D. Rights and privileges include vacation and sick
2 leave with pay, holiday pay, severance pay, and pension and
3 insurance plans.

4 5222.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

5 Subpart 1. Definition. Real estate salespeople are
6 persons licensed as real estate salespersons under Minnesota
7 Statutes, chapter 82. Securities salespeople are persons
8 licensed as agents under Minnesota Statutes, chapter 80A.

9 Subp. 2. Independent contractor, real estate. A real
10 estate salesperson who is a qualified real estate agent under
11 the Internal Revenue Code of 1954, section 3508(b)(1) is an
12 independent contractor. The Internal Revenue Code of 1954,
13 section 3508(b)(1) is incorporated by reference as the standard
14 to be used under this chapter. A real estate salesperson who is
15 not a qualified real estate agent under that standard is
16 nonetheless an independent contractor if all the following
17 conditions are substantially met.

18 A. The salesperson is licensed to one broker and the
19 cost of the license is paid by the salesperson.

20 B. The broker makes available to the salesperson
21 office facilities and property listing, and assists the
22 salesperson by giving advice and by cooperating in his or her
23 endeavors.

24 C. The broker furnishes the salesperson with
25 necessary business forms, stationery, cards, and instructs him
26 or her in office procedures and business policies either
27 verbally or by means of written instructions, such as sales
28 manuals.

29 D. The salesperson agrees to work diligently for the
30 broker and to conduct his or her business and regulate his or
31 her habits so as to maintain and increase the good will and
32 reputation of the broker.

33 E. The salesperson agrees not to sell for other
34 brokers.

35 F. The salesperson provides his or her own

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1 transportation and pays all expenses incurred in the
2 solicitation of business.

3 G. The salesperson generally reports to work daily
4 but works no fixed number of hours.

5 H. Meetings are held in the broker's office on a
6 regular basis, usually weekly, but attendance at these meetings
7 is voluntary.

8 I. Sales are closed in the name of the broker.

9 J. The money is turned over to the broker who pays
10 the salesperson commissions at periodic intervals.

11 K. The salesperson's success is primarily dependent
12 on his or her own initiative and effort.

13 Subp. 3. Independent contractor, securities. A securities
14 salesperson is an independent contractor if all the following
15 conditions are substantially met.

16 A. The securities dealer engages the salesperson in
17 the furtherance of the business.

18 B. The salesperson is licensed to a particular dealer.

19 C. The dealer furnishes the salesperson with desk
20 space, telephone and telegraph facilities, market quotations,
21 statistical and bookkeeping services, and clerical assistance.

22 D. The salesperson agrees to work diligently for the
23 dealer and to abide by all laws, rules, and regulations under
24 which the dealer operates the business.

25 E. The salesperson is not required to work fixed
26 hours.

27 F. The salesperson concludes sales in the name of the
28 dealer and pays over the money to the dealer.

29 G. The salesperson is paid on a commission basis at
30 periodic intervals.

31 H. Under certain circumstances, the salesperson may
32 bear a part of the losses resulting from a transaction.

33 I. Sales meetings are held regularly, but attendance
34 is voluntary.

35 J. The salesperson's income is primarily dependent on
36 his or her own initiative and effort.

1 Subp. 4. **Employee.** A salesperson is an employee when all
2 of the following criteria are substantially met.

3 A. the salesperson is paid a salary or guaranteed
4 minimum wage;

5 B. the employer requires fixed hours of work;

6 C. the employer requires that nearly all work be done
7 on the broker's or dealer's premises;

8 D. the employer requires attendance at employer's
9 office at specific times;

10 E. the broker or dealer has the right to interrupt or
11 set the order of services;

12 F. the employer provides instruction or training in
13 how the salesperson approaches prospects, closes sales, and
14 works on particular problems; and

15 G. the employer requires the salesperson to report on
16 activities.

17 5222.0240 REGISTERED AND PRACTICAL NURSES.

18 Subpart 1. **Definition.** Registered nurses are persons
19 licensed as such pursuant to Minnesota Statutes. Practical
20 nurses are persons licensed as such pursuant to Minnesota
21 Statutes.

22 Subp. 2. **Independent contractor.** A nurse is an
23 independent contractor if:

24 A. The nurse holds himself or herself out to the
25 public as exercising an independent calling requiring
26 specialized skills.

27 B. The nurse has full discretion in administering his
28 or her professional services. Full discretion is present even
29 though the nurse may be subject to the supervision of the
30 attending physician.

31 C. The nurse is retained full time by the purchaser
32 and the work relationship between the purchaser and the nurse is
33 expected to terminate when the job is completed.

34 D. The nurse is not retained full time by a purchaser
35 and the nurse is available to others for private duty nursing.

1 Subp. 3. **Employee.** A nurse who works for a hospital,
2 clinic, nursing home, public health agency, or as an office
3 attendant for a private physician is an employee if all the
4 following criteria are substantially met.

5 A. The nurse works full time on the regular staff of
6 the firm.

7 B. The nurse works for a salary and follows
8 prescribed routines during fixed hours when he or she is not
9 available for private duty nursing.

10 C. The nurse's services are integrated into the
11 employer's business.

12 D. The employer has the right to set the order of and
13 supervise the services.

14 5222.0250 UNLICENSED "NURSES."

15 Nurses' aides, domestics, and other unlicensed individuals
16 who continue to classify themselves as practical nurses are, in
17 general, insufficiently trained or equipped to render
18 professional or semi-professional "nursing." Their services are
19 normally those expected of maids, servants, and domestics, for
20 example, bathing the individual, combing the individual's hair,
21 reading, arranging bedding and clothing, preparing or serving
22 meals, and occasionally giving oral medication left in their
23 custody. The status of these persons is determined pursuant to
24 part 5222.0080, domestic service.

25 5222.0260 TAXICAB DRIVERS.

26 Subpart 1. **Definition.** Taxicab drivers are persons who
27 offer fee for service auto transportation within a limited area.

28 Subp. 2. **Independent contractor.** A driver is an
29 independent contractor if all of the following criteria are
30 substantially met.

31 A. The driver owns and drives his or her own cab, or
32 leases it on a flat rate basis and pays a specified rental on a
33 daily, weekly, or similar time basis.

34 B. The driver is free to work the shift he or she
35 chooses, and there is no control over when and where the driver

1 works.

2 C. The driver's sole compensation is the fares and
3 tips collected from patrons.

4 D. The driver is required to comply with government
5 rules and regulations and with firm regulations that are meant
6 to ensure proper care and handling of the cab.

7 E. The driver is not required to report his or her
8 whereabouts and is not subject to instructions on where to seek
9 patrons.

10 F. If the driver leases the cab, the lessor is
11 interested only in receiving the cab rental and, in many cases,
12 payment for gasoline and oil that the driver is required to buy
13 from the lessor.

14 G. The opportunity for profit or risk of loss rests
15 with the driver, not the lessor.

16 Subp. 3. **Employee.** A taxicab driver is an employee if all
17 the following criteria are substantially met.

18 A. The employer exercises control over the driver
19 while the driver is in possession of the cab.

20 B. The driver must work during specified hours or on
21 assigned shifts, pick up passengers on call, and report his or
22 her whereabouts periodically.

23 C. The driver must account for fares collected.

24 D. The employer requires that the driver perform the
25 services personally.

26 E. The employer gives instructions on matters of
27 appearance, behavior, manner of seeking patrons, routes, order
28 of services, and time off from duty.

29 F. Payment is in the form of a salary or salary plus
30 a percentage of fares.

31 G. The driver is required to report personally and
32 regularly or furnish written reports.

33 H. There are no business expenses on the part of the
34 driver.

35 I. Both parties have the right to terminate the
36 relationship at any time.

1 J. There is no investment or opportunity for profit
2 or risk of loss on the part of the driver.

3 5222.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.

4 Subpart 1. Definition. Timber fellers employ chainsaws or
5 other mechanical devices mounted on logging vehicles to fell
6 trees. Trees so felled may either be delimbed at the site or
7 subsequently at roadside landings.

8 Buckers cut trees into merchantable lengths, with either
9 chainsaw or heavier machinery such as slashers, harvesters, and
10 processors. These operations may also be conducted either at
11 the felling site or at roadside. In either case the product is
12 piled or otherwise accumulated to facilitate subsequent
13 transportation.

14 Skidders or forwarders either drag logs or trees to
15 roadside landings, or load and transport logs or shortwood
16 (fuelwood or pulpwood) to similar destinations.

17 Timber harvesters and processors combine two or more of the
18 operations described above.

19 Mechanical debarking and/or chipping may also be
20 coordinated with skidding or forwarding operations.

21 Chips are usually blown into semi-trailer vans for delivery
22 to mills for remanufacture or to furnaces for fuel.

23 Subp. 2. Neutral factors. Due to the nature of the work
24 and certain customs in the field, the following factors are
25 neutral: lack of fixed hours of work, payment on a piecework
26 basis, ownership of small tools, and requirements that the
27 product of the work be within overall specifications.

28 Subp. 3. Independent contractor. A feller, bucker,
29 skidder, or processor is an independent contractor if all of the
30 following criteria are substantially met.

31 A. The worker is granted timber rights to tracts of
32 land and legally binds himself or herself to remove all or
33 certain parts of the timber within specified times at set prices.

34 B. The worker bargains for "package" jobs which he or
35 she will do by methods of his or her own choice subject to

1 production specifications required by the contracting company.

2 C. The worker is paid to obtain a result, which does
3 not necessarily depend on his or her own personal services.

4 D. The worker is free to hire and direct others to do
5 the work and the worker is responsible for expenses incurred in
6 fulfilling the contract.

7 E. The worker supplies the necessary equipment and
8 sometimes the tools used by the helpers.

9 F. The worker determines the working hours and rates
10 of pay, and otherwise controls the helpers' working conditions.

11 G. The worker holds himself or herself out to the
12 public as a contractor and sometimes holds several logging
13 contracts at the same time.

14 H. The worker is in a position to make a profit or
15 suffer a loss, depending on the management of helpers, the care
16 of the tools and equipment, and the methods used for doing the
17 work.

18 I. As long as the worker produces final results that
19 measure up to specifications, there is no desire or legal right
20 to interfere with the worker's methods.

21 Subp. 4. **Employee.** A feller, buckler, skidder, or
22 processor is an employee if all of the following criteria are
23 substantially met.

24 A. The feller, buckler, skidder, or processor is
25 assigned specific portions of the area to be harvested, but the
26 right to work in other portions is not given to him or her
27 exclusively.

28 B. The company assigns a number of workers to each
29 area. They are told the kind and size of trees to cut. Trees
30 designated to be cut because of a conservation or
31 sustained-yield program do not indicate employment.

32 C. The company foreman periodically inspects the work
33 area to be harvested and, if not satisfied with the progress
34 being made, replaces the workers with another crew.

35 D. The crews may be shifted from one work area to
36 another to speed up operations and if a worker is ill or not

1 doing satisfactory work the foreman may replace the worker.

2 E. The worker chooses his or her own hours of work,
3 but is required to finish each work area within a certain time
4 and to do so usually requires long and regular hours of work.

5 F. The worker may be paid on a piecework basis or by
6 the cord, but generally the company will not pay for products
7 that do not measure up to specifications. Keeping records of
8 wages paid and hours worked is not indicative of employment if
9 it is required only to ensure that the products may be shipped
10 in interstate commerce.

11 5222.0280 SAWMILL OPERATORS.

12 Subpart 1. Definition. Sawmill operators manage
13 sawmills. A sawmill is used to convert logs into lumber or
14 other forest products. The mills may be stationary or portable.
15 Moving the logs into position, the sawing operation itself, and
16 the stacking or removal of the products often require the
17 services of a crew of workers.

18 Subp. 2. Independent contractor. A sawmill operator is an
19 independent contractor if all of the following criteria are
20 substantially met.

21 A. The operator has a substantial investment because
22 he or she owns all or part of the mill and equipment used to
23 move logs, lumber, or other forest products.

24 B. The operator contracts to saw, or harvest and saw,
25 timber at so much per thousand board feet. The operator may
26 bind himself or herself by contract to complete the job within a
27 set time or to produce a daily or weekly quota.

28 C. The work calls for independent thought and action
29 based on business judgment, experience, and training.

30 D. The operator contracts to do a specific job, using
31 his or her own methods. The only control over the work concerns
32 attainment of an acceptable result.

33 E. The operator hires, pays, and directs his or her
34 own crews.

35 F. The operator is not required to do the work

1 personally, but is responsible for its being done.

2 G. The operator is in a position to lose or profit
3 from management of the workers and care of the equipment.

4 H. The operator is free to work for others.

5 I. There is no restriction of activities so long as
6 the sawmill turns out products that meet the overall
7 specifications in the contract.

8 Subp. 3. **Employee.** A sawmill operator is an employee if
9 all of the following criteria are substantially met.

10 A. The purchaser of the services pays the cost of
11 running the mill, even though the operator may own the mill.

12 B. The operator may pick a crew to operate the mill,
13 but the company pays them and can fire them for poor work.

14 C. The company has the right to tell the operator
15 what hours to work and require the operator to keep records of
16 the amount produced and on hand daily.

17 D. The mill is moved from one tract to another as the
18 company requires.

19 E. The operator may be paid a salary or pay may be
20 computed on a piecework basis.

21 F. The services are terminable by either party at any
22 time.

23 G. The operator has no business expenses nor
24 opportunity for profit or risk of loss.

25 H. The operator cannot work for others.

26 5222.0290 TRUCK OWNER-DRIVERS.

27 Subpart 1. **Definition.** A truck owner-driver is any
28 individual, partnership, or corporation (hereinafter referred to
29 as "individual") who owns or holds a vehicle as defined in
30 subpart 2 under a bona fide lease and who leases that vehicle
31 together with driver services to an entity which holds itself
32 out to and does transport freight as a for-hire or private motor
33 carrier.

34 Subp. 2. **Independent contractor.** In the trucking
35 industry, an owner-operator of a vehicle that is licensed and

1 registered as a truck, tractor, or truck-tractor by a
2 governmental motor vehicle regulatory agency is an independent
3 contractor, not an employee, while performing services in the
4 operation of his or her truck, if each of the following factors
5 are substantially present.

6 A. The individual owns the equipment or holds it
7 under a bona fide lease arrangement.

8 B. The individual is responsible for the maintenance
9 of the equipment.

10 C. The individual bears the principal burden of the
11 operating costs, including fuel, repairs, supplies, vehicle
12 insurance, and personal expenses while on the road.

13 D. The individual is responsible for supplying the
14 necessary personal services to operate the equipment.

15 E. The individual's compensation is based on factors
16 related to the work performed including a percentage of any
17 schedule of rates or lawfully published tariff and not on the
18 basis of the hours or time expended.

19 F. The individual generally determines the details
20 and means of performing the services, in conformance with
21 regulatory requirements, operating procedures of the carrier,
22 and specifications of the shipper.

23 G. The individual enters into a contract that
24 specifies the relationship to be that of an independent
25 contractor and not that of an employee.

26 Subp. 3. Employee. An owner operator of a vehicle as
27 defined in subpart 2 is an employee, not an independent
28 contractor, while performing services in the operation of the
29 individual's truck, if all of the following criteria are
30 substantially met.

31 A. The individual is paid compensation for his or her
32 personal services:

33 (1) based solely on wage by the hour or a similar
34 time unit that is not related to a specific job or freight
35 movement;

36 (2) on a premium basis for services performed in

1 excess of a specified amount of time; and

2 (3) from which FICA and income tax is withheld.

3 B. The individual is treated as an employee by the
4 firm with respect to fringe benefits offered to employees by the
5 firm.

6 C. The individual usually works defined hours.

7 D. The employer requires that the individual must
8 perform the work personally and cannot change drivers.

9 E. The individual has no choice in the acceptance or
10 rejection of a load.

11 F. The individual and firm have no written contract;
12 or, if there is a written contract, it does not specify the
13 individual's relationship with the firm as being that of
14 independent contractor.

15 5222.0291 WASTE MATERIALS HAULERS.

16 Part 5222.0290 applies to truck owner-drivers who meet the
17 definition of part 5222.0290, subpart 1 except that they
18 transport waste materials instead of freight.

19 5222.0292 MESSENGERS/COURIERS.

20 Subpart 1. Definition. Messenger/couriers are vehicle
21 drivers who ~~deliver-cargo~~ transport property for a company
22 ~~licensed-as-a-local-cartage-carrier-or-courier-service~~
23 carrier operating under a permit or certificate pursuant to
24 Minnesota Statutes, chapter 221 in local or intrastate commerce
25 or operating as an exempt carrier pursuant to the Interstate
26 Commerce Act.

27 Subp. 2. Independent contractor. A messenger/courier is
28 an independent contractor if all of the following criteria are
29 substantially met.

30 A. The messenger/courier owns ~~and-drives-his-or-her~~
31 own-vehicle or holds a vehicle under a bona fide lease or leases
32 a vehicle and provides driver services in local or intrastate
33 transportation and in interstate commerce the messenger/courier
34 provides the means for the transportation of the property.

35 B. The messenger/courier is free to accept or reject

1 jobs from a carrier and there is no control over when the
2 individual works.

3 ~~C. The messenger/courier-is-compensated-per-delivery~~
4 The messenger/courier's compensation is based on factors related
5 to the work performed including (1) a percentage of any schedule
6 of rates, or (2) a percentage of a lawfully published tariff or
7 (3) is compensated per delivery.

8 D. All expenses are paid by the messenger/courier and
9 the opportunity for profit or loss rests with him or her.

10 E. The messenger/courier is responsible for the
11 operating costs, including fuel, repairs, supplies, and vehicle
12 insurance.

13 F. The messenger/courier determines the details and
14 means of performing the services, such as the selection of
15 routes and the order of deliveries.

16 G. The messenger/courier is responsible for the
17 completion of a specific job and is liable for failure to
18 complete the job.

19 H. The messenger/courier enters into a contract that
20 specifies the relationship to be that of an independent
21 contractor and not that of an employee.

22 Subp. 3. **Employee.** A messenger/courier is an employee if
23 all of the following criteria are substantially met.

24 A. The messenger/courier must work during specified
25 hours or an assigned shift.

26 B. Payment is ~~on-a-salary-or-hourly-basis-rather-than~~
27 per-delivery-basis based solely by the hour or a similar time
28 unit that is not related to a specific job.

29 ~~C. The-employing-carrier-reimburses-the~~
30 ~~messenger/courier-for-all-expenses~~ The company utilizing the
31 service of the messenger/courier reimburses all expenses to the
32 messenger/courier including those contained in the company's
33 schedule of rates or lawfully published tariffs.

34 ~~D. The-employing-carrier-furnishes-the-delivery~~
35 ~~vehicle~~ The company utilizing the services of the
36 messenger/courier is responsible for providing the vehicle and

1 all of its expenses.

2 E. There is no investment or opportunity for profit
3 or risk of loss on the part of the messenger/courier.

4 F. ~~The employing carrier furnishes insurance for the~~
5 ~~vehicle used by the messenger/courier~~ The company utilizing the
6 services of the messenger/courier is responsible for all
7 operating expenses, including fuel, repairs, supplies, and
8 vehicle insurance.

9 5222.0300 VARIETY ENTERTAINERS.

10 Subpart 1. **Definition.** A variety entertainer is a person
11 who entertains and amuses audiences by means of acts or skits,
12 dances, readings, feats of skill, songs, or comedy acts. The
13 entertainer performs in the legitimate and burlesque theaters,
14 movie houses, circuses, fairs, hotels, and night clubs.

15 Variety entertainers specialize in one or two types of
16 acts. The more talented create and develop their own acts or
17 routines and sometimes train others to help perform them. They
18 often work in pairs or as members of troupes.

19 Subp. 2. **Neutral factors.** The status of a variety
20 entertainer is not determined by the entertainer's entering into
21 the form B contract of the American Federation of Musicians.
22 This contract purports to establish an employer and employee
23 relationship between the purchaser of the services and the
24 entertainer. The actual relationship, rather than the terms of
25 the contract, governs.

26 Subp. 3. **Independent contractor.** A variety entertainer is
27 an independent contractor if all of the following criteria are
28 substantially met.

29 A. The entertainer performs acts or routines as a
30 series of short-term engagements for a number of different
31 operators of theaters, night clubs, restaurants, and similar
32 establishments.

33 B. The entertainer's contract, which is usually
34 obtained through booking agents or personal representatives,
35 specifies only the time, place, and duration of each engagement,

1 and the pay.

2 C. The entertainer furnishes his or her own music
3 arrangements, stage props, and dress.

4 D. The entertainer's act is not an integral part of
5 another's business.

6 E. The entertainer maintains a high degree of
7 individuality and establishes a reputation based on the
8 acceptance by the audiences for which the entertainer performs.

9 Subp. 4. **Employee.** A variety entertainer is an employee
10 when all of the following criteria are substantially met.

11 A. The entertainer is subject to supervision over the
12 number, time, place, and length of rehearsals and performances,
13 and as to duty and behavior, and is bound by rules and
14 regulations to the purchaser of the services.

15 B. The entertainer's variety acts may undergo
16 considerable change in order to suit the employer's purpose. It
17 may be shortened, lengthened, or moved from one spot to another
18 to weld it, with others, into one complete show or to coordinate
19 it with other activities. In that case, individuality of the
20 performer is subordinated to the purpose of enhancing the
21 reputation of the purchaser of the services.

22 C. The entertainer's performance becomes an integral
23 part of another's business.

24 D. The entertainer is engaged on a long-term basis.

25 E. The entertainer may not work for others.

26 F. The entertainer has no opportunity for profit or
27 risk of loss, must frequently work with others, and can be
28 shifted from one place to another.

29 G. The entertainer can be discharged at any time.

30 H. The entertainer cannot hire helpers or substitutes.

31 5222.0310 SPORTS OFFICIALS.

32 Subpart 1. **Definition.** A sports official is an individual
33 engaged to referee games of sport such as basketball, hockey, or
34 football where the level of competition requires the sports
35 official to be a member of or certified by an organization whose

1 purpose is to maintain minimum standards and qualifications of
2 sports officials.

3 Subp. 2. **Independent contractor.** A sports official is an
4 independent contractor if all the following conditions are
5 substantially met.

6 A. There is a written contract between the sports
7 official and the party or association engaging the services of
8 the sports official that states specifically that the sports
9 official is an independent contractor.

10 B. Payment to the sports official is for a set fee
11 for each game officiated.

12 C. The official is free under the terms of the
13 contract to accept or reject assignments of any game.

14 D. The sports official is not limited to exclusively
15 officiating with the party engaging the services as a sports
16 official.

17 Subp. 3. **Employee.** A sports official is an employee if
18 all of the following criteria are substantially met.

19 A. The official is paid on an hourly, weekly, or
20 similar time basis.

21 B. The official must work at the times and places
22 designated by the purchaser of the official's services, and is
23 not free to reject assignments.

24 C. The official is not free to sell his or her
25 services to other parties while working for the purchaser.

26 D. The relationship is terminable at will without any
27 liability to the official.

28 5222.0311 JOCKEYS.

29 Subpart 1. **Definition.** A jockey is a person who is
30 licensed under Minnesota Statutes, chapter 240 to ride race
31 horses for compensation as a jockey or apprentice jockey.

32 Subp. 2. **Independent contractor.** A jockey is an
33 independent contractor with respect to the racetrack, trainer,
34 and horse owner if all of the following criteria are
35 substantially met.

1 A. Arrangements for rides are made by the jockey or
2 by an agent of the jockey who receives a commission from the
3 jockey.

4 B. The jockey is free to ride the horses of any
5 stable.

6 C. The jockey is free to accept or reject a call.

7 D. The jockey provides his or her own saddle.

8 E. The trainer instructs the jockey regarding the
9 nature of the mount, the setup of the race, and the trainer's
10 expectations of the running of the race. The jockey is free to
11 disregard the instructions of the trainer, and may decide the
12 route to be taken, the rate of speed of the horse, and similar
13 matters regarding the running of the race.

14 F. Payment is a fee paid on a per-race basis from the
15 horseperson's account of the racetrack.

16 Subp. 3. **Employee.** A jockey is an employee of the trainer
17 if all of the following criteria are substantially met.

18 A. The jockey rides only for the employing trainer or
19 the jockey rides for other trainers only with the permission of
20 the employing trainer.

21 B. The jockey is not free to reject the employing
22 trainer's call.

23 C. The trainer provides or pays for the jockey's
24 saddle.

25 D. The jockey is not free to disregard the
26 instructions of the trainer regarding the running of the race
27 except for safety reasons.

28 E. The jockey is paid a salary or wage by the trainer
29 on a time rather than per-race basis; compensation usually
30 includes room and board, and the wage may be paid from the
31 horseperson's account at the racetrack.

32 5222.0312 TRAINERS.

33 Subpart 1. **Definition.** A trainer is a person who is
34 licensed as a trainer under Minnesota Statutes, chapter 240.

35 Subp. 2. **Independent contractor.** A trainer is an

1 independent contractor with respect to the racetrack and to the
2 owners if all of the following criteria are substantially met.

3 A. The trainer sets a fee which covers the daily fee,
4 and bills the owner for the day pay and any additional supplies
5 or services incurred in the care of the horse.

6 B. Tack, feed, board, and all supplies necessary for
7 the ordinary care of the horse are provided by the trainer.

8 C. The trainer has a substantial capital investment
9 in tack, equipment, and supplies.

10 D. The trainer makes all decisions regarding
11 management of the horse while the horse is at the trainer's
12 stable. If the trainer disagrees with instructions of the
13 owner, the trainer is free to tell the owner to remove the horse
14 from the trainer's care, and the owner must comply.

15 E. The trainer is free to stable and train the horses
16 of other owners.

17 Subp. 3. **Employee.** A trainer is an employee of an owner
18 if all the following criteria are substantially met.

19 A. The trainer is paid on a salary, wage, or similar
20 time basis.

21 B. Tack, feed, board, equipment, and supplies for the
22 care of the horse are provided by the owner.

23 C. The stables are owned or operated by the owner of
24 the horses.

25 D. The trainer must comply with instructions of the
26 owner regarding management of the horse, although the owner
27 generally relies on the expertise of the trainer.

28 E. The trainer may stable and train the horses of
29 others only with the permission of the employing owner.

30 F. The trainer's hours of work are set by the owner
31 of the horse.

32 5222.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

33 Parts 5222.0330 and 5222.0340 shall be used to determine if
34 an individual is an independent contractor or an employee where
35 the occupation is not defined in parts 5222.0020 to 5222.0312.

1 Additionally, these parts provide interpretative guidance where
2 the occupation is defined but the safe harbor criteria for that
3 occupation are not all substantially met. Where some but not
4 all of the safe harbor criteria are substantially met, those
5 criteria which are substantially met shall be considered
6 evidence of that status, and shall control where a conflicting
7 result for that criterion is indicated by parts 5222.0330 to
8 5222.0340. ~~Nothing-contained-in-this-chapter-is-intended-to~~
9 ~~prevent-or-prohibit-an-insurer-from-seeking-a-reimbursement~~
10 ~~agreement-from-an-insured-where-an-insured-disputes-the~~
11 ~~insurer's-underwriting-or-audit-judgment-on-the-application-of~~
12 ~~this-chapter-for-purposes-of-determining-premium.~~

13 5222.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

14 Subpart 1. **Generally.** The most important factor in
15 determining whether a person is an independent contractor is the
16 degree of control which the purported employer exerts over the
17 manner and method of performing the work contracted. The more
18 control there is the more likely the person is an employee and
19 not an independent contractor. Subparts 2 to 14 describe
20 criteria for determining if there is control over the method of
21 performing or executing services. The total circumstances,
22 including the practices and the customs of the industry, must be
23 considered to determine if control is present.

24 Subp. 2. **Authority over individual's assistants.** Control
25 over the individual is indicated when the employing unit hires
26 and pays the individual's assistants and supervises the details
27 of the assistants' work.

28 Subp. 3. **Compliance with instructions.** Control is
29 indicated when an individual is required to comply with detailed
30 instructions about when, where, and how he or she is to work
31 including the order or sequence in which the service is to be
32 performed. Mere suggestions as to detail, or necessary and
33 usual cooperation where the work furnished is part of a larger
34 undertaking, does not normally evince control. Some individuals
35 may work without receiving instructions because they are highly

1 proficient in their line of work; nevertheless, the control is
2 present if the employing unit has the right to instruct or
3 direct the methods for doing the work and the results achieved.
4 Instructions may be oral or may be in the form of manuals or
5 written procedures which show how the desired result is to be
6 accomplished. However, instructions required by state or
7 federal law or regulation or general instructions passed on by
8 the employing unit from a client or customer, do not evince
9 control.

10 **Subp. 4. Oral or written reports.** Control is indicated if
11 regular oral or written reports relating to the method in which
12 the services are performed must be submitted to the employing
13 unit. Periodic reports relating to the accomplishment of a
14 specific result may not be indicative of control if, for
15 example, the reports are used to establish entitlement to
16 partial payment based upon percentage of completion of a job, or
17 the reports are needed to determine compliance with the terms of
18 a contract. Completion of receipts, invoices, and other forms
19 customarily used in the particular type of business activity or
20 required by law does not constitute written reports.

21 **Subp. 5. Place of work.** Control is indicated if work
22 which could be done elsewhere is done on the employing units
23 premises, especially when the work could be done elsewhere.
24 When work is done off the premises, freedom from control is
25 indicated except in occupations where the services are
26 necessarily performed away from the premises of the employing
27 unit.

28 **Subp. 6. Personal performance.** Control is indicated if
29 the services must be personally rendered to the employing unit.
30 Personal performance of a very specialized work, when the worker
31 is hired on the basis of professional reputation, as in the case
32 of a consultant known in the academic and professional circles
33 to be an authority in the field, is a less reliable indicator of
34 control. Lack of control is indicated when an individual has
35 the right to hire a substitute without the employing unit's
36 knowledge or consent.

1 Subp. 7. **Existence of continuing relationship.** The
2 existence of a continuing relationship between an individual and
3 the person for whom he or she performs services indicates the
4 existence of an employment relationship. Continuing services
5 may include work performed at frequently recurring, though
6 somewhat irregular intervals, either on call of the employing
7 unit or whenever work is available.

8 Subp. 8. **Set hours of work.** The establishment of set
9 hours of work by the employing unit indicates control. Where
10 fixed hours are not practical because of the nature of the
11 occupation, a requirement that the worker work at certain times
12 indicates control.

13 Subp. 9. **Training.** Training of an individual by an
14 experienced employee, by required attendance at meetings, and by
15 other methods, indicates control, especially if the training is
16 given periodically or at frequent intervals.

17 Subp. 10. **Amount of time.** Control is indicated where the
18 worker must devote full time to the activity. Full time does
19 not necessarily mean an eight-hour day or a five- or six-day
20 week. Its meaning may vary with the intent of the parties, the
21 nature of the occupation, and customs in the locality.
22 Full-time services may be required even though not specified in
23 writing or orally. For example, a person may be required to
24 produce a minimum volume of business which compels the person to
25 devote all working time to that business, or the person may not
26 be permitted to work for anyone else.

27 Subp. 11. **Simultaneous contracts.** If an individual works
28 for a number of persons or firms at the same time, lack of
29 control is indicated.

30 Subp. 12. **Tools and materials.** The furnishing of tools,
31 materials, and supplies by the employing unit indicates control
32 over the worker. When the worker furnishes these items, lack of
33 control is indicated. Lack of control is not indicated if the
34 individual provides tools or supplies customarily furnished by
35 workers in the trade.

36 Subp. 13. **Expense reimbursement.** Payment by the employing

1 unit of either the worker's approved business or traveling
2 expenses, or both, indicates control over the worker. A lack of
3 control is indicated when the worker is paid on a job basis and
4 is responsible for all incidental expenses.

5 Subp. 14. **Satisfying requirements of regulatory and**
6 **licensing agencies.** Control is not indicated where an employing
7 unit is required to enforce standards or restrictions imposed by
8 regulatory or licensing agencies.

9 5222.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO
10 CONSIDER.

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

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

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

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

1 magazine.

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

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

- 21 A. hire, direct, and pay assistants;
22 B. provide own office, equipment, materials, or other
23 facilities for doing the work;
24 C. continuing and recurring financial liabilities or
25 obligations, relating to the work;
26 D. profit or loss in the work depends upon the
27 relationship of receipts to expenditures;
28 E. expenses incurred in connection with the work are
29 paid by the individual;
30 F. specific jobs are performed for prices agreed upon
31 in advance; and
32 G. performance of the services affects the
33 individual's business reputation, and not the business
34 reputation of those who purchase the services.

35 Subp. 6. Termination. The worker's right to terminate the
36 working relationship with the purported employer at will and

1 without incurring liability for noncompletion indicates
2 employment. A requirement to provide notice of termination for
3 some period in advance of the termination is not relevant for
4 purposes of this subpart. Independent contractor status is
5 indicated where the individual agrees to complete a specific
6 job, is responsible for its satisfactory completion, and is
7 liable for failure to complete the job.

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

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

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