

CHAPTER 5224
DEPARTMENT OF LABOR AND INDUSTRY
INDEPENDENT CONTRACTOR

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5224.0010 PURPOSE.

The purpose of this chapter is to establish standards for distinguishing between an employee and an independent contractor for purposes of workers' compensation coverage under Minnesota Statutes, sections 176.021 and 176.041. For those occupations specifically discussed in parts 5224.0020 to 5224.0312, this chapter establishes a "safe harbor" for assuring either independent contractor or employee status in those occupations. Where a worker is within the scope of the definition of a part, but does not meet the safe harbor criteria for either independent contractor or employee status, the determination shall be made as described in part 5224.0320.

"Employee" as used in this chapter means a worker who is not an independent contractor. The employee safe harbor criteria are not intended to define "employee" under Minnesota Statutes, section 176.011, subdivision 9, for any purpose other than distinguishing workers who are not independent contractors.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 18 SR 1379*

5224.0020 ARTISANS.

Subpart 1. **Definition.** An artisan is a person who has been trained in a mechanical art or trade. The particular skill necessary in the work is acquired by attending a technical college, serving an apprenticeship, or by working as a handyman or helper and learning the trade informally.

Artisans include bricklayers, blocklayers, cable installers, carpenters, electricians, roofers, siders, painters, plasterers, paperhangers, tapers, joiners, plumbers, and steamfitters.

Subp. 2. **Independent contractor.** An artisan is an independent contractor and not an employee if all of the following criteria are substantially met.

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

- B. The artisan is free to select others to assist in performing the job.
- C. The artisan has the opportunity of making a profit or suffering a loss and is not guaranteed a minimum income.
- D. The artisan has business expenses beyond the furnishing of tools, such as scaffolding, ladders, trucks, equipment, and advertising.
- E. The artisan has a substantial investment in facilities or equipment.
- F. The artisan holds himself or herself out to the public as being available to perform services for others.
- G. Payment for the work is on a job basis for a complete job rather than a time basis.
- H. The artisan agrees to provide lien waivers upon completion of the job.

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

- A. The artisan is hired to do the work personally and any helpers are hired, paid, and subject to control by the purchaser of the artisan's services.
- B. Work is during fixed hours established by the purchaser and on a full-time basis.
- C. The artisan is paid on an hourly, weekly, or similar rate that is independent of the amount of work completed.
- D. The artisan has no substantial investment in facilities or equipment for doing the work.
- E. Materials and equipment other than hand tools are supplied by the purchaser of the artisan's services.
- F. The artisan will not incur a loss or realize a profit by exercising independent judgment in hiring helpers, selecting the materials used, determining methods of work, or similar matters.
- G. If the artisan does not complete the job, the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job.

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; L 1987 c 258 s 12; L 1989 c 246 s 2*

5224.0030 BARBERS.

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

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

- A. The barber rents a barber chair from the purported employer for a flat sum per week, month, or similar time basis.
- B. All payments by customers for services are retained by the barber.
- C. The barber furnishes his or her own tools, but need not furnish linens or supplies.
- D. The purported employer does not have the right to control the means and manner of the barber's performance of services such as haircuts, shaves, shampoos, scalp treatments, and facial massages.

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

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

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

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

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

D. The barber does not advertise.

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0040 BOOKKEEPERS AND ACCOUNTANTS.

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

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

A. The bookkeeper rents an office or maintains one in the home.

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0050 BULK OIL PLANT OPERATORS.

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

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

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

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

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

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

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

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

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

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

(4) furnish trucks and other equipment; and

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

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

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

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

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

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

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

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

E. The operator is not personally obligated to pay wages or does not assist in paying the truck or plant maintenance expenses.

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

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5224.0060 COLLECTORS.

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

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

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

- (1) is assigned a specific territory and furnished lists of people from whom to collect;
- (2) is not required to conform to fixed hours, devote any particular amount of time to the business, or produce a minimum volume of collections;
- (3) is required to cover the territory regularly, but works out a schedule of contacts;
- (4) reports to the office only to turn in collections and to get new lists;
- (5) receives a fixed percentage of the collections made, out of which are paid all expenses connected with the work;
- (6) is not guaranteed a minimum income; and
- (7) is free to engage in other employment, including collecting accounts for other firms.

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

- (1) bills can be paid at any and all times the collector's premises is open for business;
- (2) the collector is not required to be present if someone is on the premises to receive payments;
- (3) the collector is not required to conform to fixed hours, or to devote any particular amount of time to the third party's business, or to give preference to the third party's customers;
- (4) the collector deposits all money collected in a bank and periodically forwards to the third party copies of bank deposit receipts, and complaint forms from customers;
- (5) the third party furnishes the collector with the necessary business forms, postage, and stationery;
- (6) the collector is required to purchase a surety bond;
- (7) the third party pays a salary for the collection services or the collector may receive a percentage of the money collected;
- (8) the collector is not trained in the work or required to follow prescribed routines; and
- (9) the collector is free to conduct private business activities in addition to the collection services.

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

- A. The services of the collector are retained to further the employer's business.
- B. The collector is required to perform services pursuant to schedules established by the employer.
- C. The employer has first call on the collector's time and efforts.
- D. The collector has no significant business expenses or investment in the business.

- E. The collector is paid on a commission or salary basis.
- F. The employer has the right to establish the means and methods used in collecting.
- G. The employer has the right to interfere with or set the order of the services.
- H. The collector must report at the firm's office regularly for conferences, training, or instructions.
- I. The hiring of helpers or substitutes is not permitted.
- J. The grounds for termination are not limited to failure to meet production quotas.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0070 CONSULTANTS.

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

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

- A. The consultant rents an office or offices at home.
- B. The consultant advertises in newspapers or trade journals, or maintains business listings, or otherwise holds himself or herself out to the public as being available for a particular type of service.
- C. The consultant is free to hire clerical help and assistants.
- D. The consultant's success in the business world is dependent entirely on personal efforts and the demand by the public for the services.
- E. The consultant operates under an arrangement where for a set fee technical advice or assistance is given.
- F. The consultant's contract of service is for a specified period of time or specific purpose.
- G. The consultant is free to work for others at the same time.
- H. The consultant is not required to observe regular hours of work either at the firm's offices or at home.
- I. The consultant agrees only to be available for conferences and consultations at the request of the firm or, as in some cases, to perform services on a specified minimum number of days.
- J. The consultant makes no regular reports and is not required to attend regular conferences with members of the firm.
- K. The consultant is not subject to control or supervision, but is given a free hand in doing work.
- L. The consultant is employed to do a specific job and those who employ the consultant are interested only in the result accomplished and not in the manner and means of accomplishing it.

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

- A. The consultant is retained for services which further the employer's business.
- B. The consultant is required to perform services personally.
- C. The consultant's services are not available to the public.
- D. The consultant has no investment or business expense.

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- E. The consultant provides recurring, rather than sporadic or infrequent, services.
- F. The employer has the right of first call on the services of the consultant.
- G. The consultant is required to report on the progress of assignments.
- H. Either party has the right to end the relationship at any time.
- I. The consultant receives a fixed salary determined on a weekly, monthly, annual, or similar basis.
- J. The consultant cannot realize a profit or loss from the services.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0080 DOMESTIC SERVICE.

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

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

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

- B. The domestic is free to work for others.
- C. The domestic may hire helpers to complete the job.
- D. The domestic is paid on a job basis rather than an hourly basis.

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

- A. The parties are not members of the same household or immediate family.
- B. The services are performed regularly and over a considerable period of time.
- C. The domestic received at least \$500 as wages from the employer for any three-month period during the preceding 12 months. This factor is alone sufficient to establish the employment relationship under Minnesota Statutes, section 176.041, subdivision 1.
- D. The domestic is not claimed as a dependent for income tax purposes.
- E. The domestic is paid on an hourly, weekly, or similar time basis.
- F. The domestic does not contribute to the employer's household expenses.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0090 BABYSITTERS.

Subpart 1. **Definition.** Babysitters are individuals who provide child-care services to parents and are not licensed to operate day care centers under Minnesota Statutes, chapter 245. Subparts 2 and 3 are applicable only if the threshold requirements of Minnesota Statutes, section 176.041, subdivision 1, have been met.

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

- A. The babysitter takes care of another's child in the babysitter's own home or other premises under the babysitter's control.
- B. The instructions given to the babysitter by the parents are general in nature, relating to matters of diet, health, rest, special foods to be given to the child, and who to contact in an emergency.

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

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

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

A. The babysitter performs child-care services in the home of the child's parents.

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

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

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

A. The agency maintains a register of names and addresses of individuals whom the agency determines are qualified to perform babysitter services. The agency advertises and otherwise holds itself out to the public as being engaged in the business of furnishing a babysitter service.

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0100 INDUSTRIAL HOMEWORKERS.

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

Subp. 2. **Independent contractor.** An industrial homeworker is an independent contractor when all the following criteria are substantially met.

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

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

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

D. There is no requirement that the homeworker give preference to the firm's work, although the homeworker is expected to complete assignments within a specified time.

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

F. Unsatisfactory work is done over without pay.

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0110 LABORERS.

Subpart 1. **Definition.** Laborers are people whose work usually requires strength rather than skill, such as laborers, chore workers, coal hustlers, gardeners, yard maintenance workers, landscaping and planting workers, tree trimmers, janitors, odd-job workers, porters, window washers, and other unskilled workers.

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

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

B. The services need not be performed personally.

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

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

E. The laborer furnishes tools.

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

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

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

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

- A. The services must be performed personally.
- B. The laborer works on employer premises or at locations assigned by the employer, at specified times, and with tools and facilities furnished by the employer. The services may be provided on a permanent, recurring, or itinerant basis.
- C. Pay is computed on a time rather than a lump-sum basis.
- D. The employer has the right to stop the laborer on one job and start on another, to speed up or slow down the worker, and to express dissatisfaction with the work and to have it redone.
- E. The laborer is not responsible for damages for noncompletion of the work. If the laborer quits prior to completing the job, the laborer is not responsible for finding a replacement.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 17 SR 1279*

5224.0120 MUSICIANS; GENERAL.

The status of musicians or groups in parts 5224.0120 to 5224.0140 is not affected by the fact that an American Federation of Musicians Form B Contract, to which the leader is a party, purports to make the purchaser their employer. The actual relationship, rather than the terms of the contract, controls.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.

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

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

- A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.
- B. The group is free to work for other purchasers of its services.
- C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.
- D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

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

- A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.
- B. The work relationship is not short term but is of a continuing nature.
- C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0140 MUSICIAN; ORCHESTRA LEADER.

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

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

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

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

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

D. The leader is charged with all expenses the orchestra incurs, and, after paying expenses and the salaries or hourly wages of the other members, suffers a loss or realizes a profit from the undertaking.

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0150 OUTSIDE COMMISSION SALESPEOPLE OR MANUFACTURER'S REPRESENTATIVES; GENERAL.

The following factors, taken together, are not sufficient to establish an employment relationship for an outside commission salesperson or manufacturer's representative under parts 5224.0160 to 5224.0180 territorial restrictions, fixing of sales prices and terms by the companies, the furnishing of leads, working off premises of the employer, and requirements

that the salespersons investigate customers' complaints, collect delinquent accounts, and refrain from selling for competitors.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 17 SR 1279*

5224.0160 TRAVELING SALESPEOPLE.

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

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

- A. The salesperson is free to solicit when, where, and how he or she pleases.
- B. The salesperson chooses working hours and schedule of calls.
- C. The salesperson chooses his or her own means of travel and is responsible for the costs of travel.
- D. The salesperson pays his or her own expenses.

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

- A. The salesperson is required to appear at or report to the firm's offices regularly.
- B. The salesperson must work during fixed hours or at certain times.
- C. The salesperson must follow and report on leads.
- D. The salesperson is required to take part in sales meetings or training courses.
- E. The salesperson is required to canvass territory at regular intervals.
- F. The firm is dependent principally on the services of traveling salespersons for the disposition of its merchandise.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0170 HOUSE-TO-HOUSE COMMISSION SALESPEOPLE.

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

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

- A. If assigned to territories, the salesperson is not granted exclusive rights to them.
- B. The salesperson is not required to canvass his or her territories within any specified time or to work during fixed hours or at certain times.
- C. The salesperson receives no training, is not required to follow an established routine or schedule, and devises his or her own methods and means of selling.
- D. The salesperson pays his or her own business expenses.
- E. The salesperson is not required to produce any minimum volume of business or follow leads furnished by the company.

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

- A. The salesperson works for only one company and on a full-time basis.
- B. The services of the salesperson are an important part of the company's business.
- C. Although the salesperson may not be required to report to the company's office at regular intervals, he or she often receives leads and instructions through the mail which must be followed.
- D. The salesperson is required to file regularly a report of activities with the company.
- E. The salesperson is required to canvass his or her territory regularly.
- F. The salesperson is required to attend sales meetings or take part in training courses.
- G. The salesperson may be visited by a sales manager or supervisor who instructs and helps in developing sales techniques and other matters.
- H. The salesperson is expected to produce a certain amount of business to continue the relationship.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0180 HOUSE-TO-HOUSE DEALER SALESPEOPLE.

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

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

- A. The dealer is not required to work during fixed hours or at certain times, to follow any particular routes or schedules or to report on his or her activities.
- B. The dealer keeps substantial inventories and has automobiles or trucks to deliver merchandise.
- C. The dealer may employ others.
- D. Compliance with suggestions or attendance at selling meetings are optional with the dealers.
- E. The dealer is not required to solicit prospective purchasers identified by the company.
- F. The dealer chooses working hours and methods of solicitation.
- G. The dealer pays business expenses and, by selling on credit, takes a risk of loss.
- H. The dealer is dependent for a livelihood on personal efforts and ingenuity in establishing clienteles and good reputations.

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

- A. The dealer must report regularly on sales, prospects, and work activities.
- B. The dealer must report regularly for sales meetings and pep talks.
- C. Although not usually required to work during hours fixed by the firm, the dealer is expected to meet a certain quota.
- D. The dealer is restricted from selling on credit and must abide by prices set by the company.
- E. Merchandise may be returned to company with no loss to the dealer.

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 17 SR 1279*

5224.0190 AGENT DRIVERS.

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

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

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

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

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

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

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

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

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

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

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

B. Helpers or substitutes are not permitted.

C. Prices are set by the company.

D. The driver cannot handle competing lines.

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

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

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

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

I. The driver is required to follow leads.

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0200 PHOTOGRAPHERS' MODELS.

Subpart 1. **Definition.** A photographer's model is a professional who poses for photographs that are used for commercial purposes. The photographs are reproduced and appear in magazines, newspapers, or similar media to aid in advertising commercial products. The model is knowledgeable or trained in such subjects as the art of makeup, fashion, hair-styling, acting, and posture.

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

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

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

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

D. The model releases property rights in each specific photograph that is to be used commercially.

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

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

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

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

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

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

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

B. The model is required to conform to instructions or suggestions on, among others, costume, coiffure, general makeup, posture, or the position and expression to assume in an assigned role.

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0210 PROFESSIONAL PERSONS.

Subpart 1. **Definition.** A professional is a person in an occupation that requires education equivalent to college graduation or beyond and involves compliance with professional and statutory licensing or registration standards before the individual can practice. The professional field includes architects, attorneys, certified public accountants, and engineers.

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

- A. The professional sets up his or her own business office.
- B. The professional hires and directs assistants or helpers.
- C. The professional pays all expenses in connection with the business.
- D. The professional offers services to the public.
- E. The professional works at hours of his or her own choice.
- F. The professional is dependent for a livelihood upon the amount of time, energy, and ingenuity applied to the work.

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

- A. The professional subordinates activities to the interests of the employer by working under conditions that make the professional's services an integral part of another's business.
- B. The professional works when and where a firm dictates.
- C. The professional is furnished an office and office facilities, and business expenses are met by the firm.
- D. The professional is paid a fixed salary determined on a weekly, monthly, annual, or similar basis.
- E. The professional's services are subject to supervision and review.
- F. The professional cannot hire a substitute or helper.
- G. The professional may be discharged at will and has the right to terminate the relationship at any time without liability.
- H. The professional incurs no expenses nor make any investment.
- I. The relationship is continuing.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0220 DOCTORS OF MEDICINE; PART-TIME SERVICES FOR INDUSTRIAL FIRMS.

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

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

- A. The firm is interested in securing a medical service rather than the personal service of the doctor and an employment relationship is not contemplated under the terms of the agreement between the parties. The doctor, in effect, accepts the firm as an additional client in the doctor's private practice.
- B. The doctor has the right to leave the firm's premises during working hours if an emergency arises in private practice.
- C. The doctor has the right to send a substitute to perform the services.
- D. The doctor does not have the right to terminate the relationship on short notice.
- E. Direct supervision and control over the services were not contemplated by the parties to the agreement.

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

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

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

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

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

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

A. Materially integrated is determined by factors such as:

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

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

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

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

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

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

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

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

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

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

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

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

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

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

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

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

B. The salesperson is licensed to a particular dealer.

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

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

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

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

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

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

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

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

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

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

B. the employer requires fixed hours of work;

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0240 REGISTERED AND PRACTICAL NURSES.

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0250 UNLICENSED "NURSES."

Nurses' aides, domestics, and other unlicensed individuals who continue to classify themselves as practical nurses are, in general, insufficiently trained or equipped to render professional or semiprofessional "nursing." Their services are normally those expected of household workers, servants, and domestics, for example, bathing the individual, combing the individual's hair, reading, arranging bedding and clothing, preparing or serving meals, and occasionally giving oral medication left in their custody. The status of these persons is determined pursuant to part 5224.0080, domestic service.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 17 SR 1279*

5224.0260 TAXICAB DRIVERS.

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

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

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

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

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

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

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

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

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

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

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

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

C. The driver must account for fares collected.

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0270 TIMBER FELLERS, BUCKERS, SKIDDERS, AND PROCESSORS.

Subpart 1. **Definition.** Timber fellers employ chain saws or other mechanical devices mounted on logging vehicles to fell trees. Trees so felled may either be delimbed at the site or subsequently at roadside landings.

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

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

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

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

Chips are usually blown into semitrailer vans for delivery to mills for remanufacture or to furnaces for fuel.

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

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Subp. 3. **Independent contractor.** A feller, buckler, skidder, or processor is an independent contractor if all of the following criteria are substantially met.

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

B. The worker bargains for "package" jobs which he or she will do by methods of his or her own choice subject to production specifications required by the contracting company.

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

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

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

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

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

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

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

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

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

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

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

D. The crews may be shifted from one work area to another to speed up operations and if a worker is ill or not doing satisfactory work the lead supervisor may replace the worker.

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852; 17 SR 1279*

5224.0280 SAWMILL OPERATORS.

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

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

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

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

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

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

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

F. The operator is not required to do the work personally, but is responsible for its being done.

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

H. The operator is free to work for others.

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

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

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

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

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

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

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

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

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

H. The operator cannot work for others.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0290 [Repealed, L 2009 c 89 s 4]

5224.0291 [Repealed, L 2009 c 89 s 4]

5224.0292 [Repealed, L 2009 c 89 s 4]

5224.0300 VARIETY ENTERTAINERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The entertainer may not work for others.

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

G. The entertainer can be discharged at any time.

H. The entertainer cannot hire helpers or substitutes.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0310 SPORTS OFFICIALS.

Subpart 1. **Definition.** A sports official is an individual engaged to referee games of sport such as basketball, hockey, or football where the level of competition requires the sports official to be a member of or certified by an organization whose purpose is to maintain minimum standards and qualifications of sports officials.

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0311 JOCKEYS.

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

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

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

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

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

D. The jockey provides his or her own saddle.

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0312 TRAINERS.

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

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Subp. 2. **Independent contractor.** A trainer is an independent contractor with respect to the racetrack and to the owners if all of the following criteria are substantially met.

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0320 GENERAL CRITERIA FOR NONSPECIFIED OCCUPATIONS.

Parts 5224.0330 and 5224.0340 shall be used to determine if an individual is an independent contractor or an employee where the occupation is not defined in parts 5224.0020 to 5224.0312. Additionally, these parts provide interpretative guidance where the occupation is defined but the safe harbor criteria for that occupation are not all substantially met. Where some but not all of the safe harbor criteria are substantially met, those criteria which are substantially met shall be considered evidence of that status, and shall control where a conflicting result for that criterion is indicated by parts 5224.0330 to 5224.0340.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

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

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

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to

work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

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

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

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

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

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

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

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

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

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

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Subp. 13. **Expense reimbursement.** Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

5224.0340 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

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

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

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

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

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

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

- A. hire, direct, and pay assistants;
- B. provide own office, equipment, materials, or other facilities for doing the work;
- C. continuing and recurring financial liabilities or obligations, relating to the work;
- D. profit or loss in the work depends upon the relationship of receipts to expenditures;
- E. expenses incurred in connection with the work are paid by the individual;

F. specific jobs are performed for prices agreed upon in advance; and

G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

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

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

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

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

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*