

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.
- 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*

Published Electronically: *June 11, 2008*