

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 214
101ST GENERAL ASSEMBLY

0099H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 285.500, 287.020, and 288.034, RSMo, and to enact in lieu thereof four new sections relating to the classification of workers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 285.500, 287.020, and 288.034, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 285.500, 285.517, 287.020, and 288.034, to read as follows:

285.500. For the purposes of sections 285.500 to ~~[285.515]~~ **285.517** the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship ~~[in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.]~~ **unless such individual is presumed to be an independent contractor under section 285.517;**

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works as defined in section 290.210;

(3) "Knowingly", a person acts knowingly or with knowledge:

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

285.517. 1. For purposes of this section, any person is conclusively presumed to be an independent contractor who performs work for any employer and satisfies all of the following criteria:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 **(1) The person has signed a written contract with the employer that states the**
5 **employer's intent to retain the services of the person as an independent contractor and the**
6 **person is required by the contract to hold any state or local business license and to**
7 **maintain any occupational license necessary to perform such services;**

8 **(2) (a) The person has filed, intends to file, or is contractually required to file, in**
9 **regard to the fees earned from work, an income tax return with the Internal Revenue**
10 **Service for a business or for earnings from self-employment; or**

11 **(b) The person provides his or her services through a business entity, including but**
12 **not limited to, a partnership, limited liability company or corporation, or through a sole**
13 **proprietorship;**

14 **(3) The person has the right to control the manner and means by which the work**
15 **is to be accomplished, even though he or she may not have control over the final result of**
16 **the work, provided that the employer may provide orientation, information, guidance, or**
17 **suggestions about the employer's products, business, services, customers and operating**
18 **systems, and training otherwise provided by law; and**

19 **(4) The person satisfies three or more of the following:**

20 **(a) The person controls the amount of time personally spent providing services,**
21 **provided that an agreement may be made with the employer relating to the final**
22 **completion or final delivery time or schedule, range of hours, or the time entertainment is**
23 **to be presented if the work contracted for is entertainment;**

24 **(b) The person has control over where the services are performed, except in the**
25 **case of services that can be performed only at certain locations;**

26 **(c) The person is not required to work exclusively with one employer, unless:**

27 **a. A law, regulation, or ordinance prohibits the person from providing services to**
28 **more than one employer; or**

29 **b. A license or permit that the person is required to maintain in order to perform**
30 **the work limits the person to working for only one employer at a time and requires**
31 **identification of the employer;**

32 **(d) The person is free to exercise independent initiative in soliciting others to**
33 **purchase his or her services;**

34 **(e) The person is free to hire employees or to contract with assistants, helpers, or**
35 **substitutes to perform all or some of the work;**

36 **(f) The person cannot be required to perform additional services without a new or**
37 **modified contract;**

38 **(g) The person obtains a license or other permission from the employer to utilize**
39 **any workspace of the employer in order to perform the work for which the person was**
40 **engaged;**

41 **(h) The employer has been subject to an employment audit by the Internal Revenue**
42 **Service and the Internal Revenue Service has not reclassified the person to be an employee**
43 **or has not reclassified the category of workers to be employees; or**

44 **(i) The person is responsible for maintaining and bearing the costs of any required**
45 **business licenses, insurance, certifications, or permits required to perform services.**

46 **2. A person who is not conclusively presumed to be an independent contractor for**
47 **failure to satisfy three or more of the criteria set forth in subdivision (4) of subsection 1 of**
48 **this section shall not be presumed to be an employee.**

49 **3. No employer shall be required to classify a person who is considered an**
50 **independent contractor under subsection 1 of this section as an employee, provided that**
51 **the employer may choose to hire and classify such person as an employee at any time.**

52 **4. This section shall not apply to:**

53 **(1) Service consisting of prearranged passenger transport provided by**
54 **transportation network drivers through a digital network offered by a transportation**
55 **network company, as defined in sections 387.400 to 387.440. The independent contractor**
56 **status of transportation network drivers shall be governed exclusively by section 387.414;**

57 **(2) Entities described in section 501(c)(3) of the Internal Revenue Code of 1986, as**
58 **amended;**

59 **(3) State or local government entities; or**

60 **(4) Federally recognized Indian tribes.**

61 **5. This section shall not overrule any exemptions from the definition of employee**
62 **or employment found in other sections of state law.**

63 **6. No political subdivision of the state shall enact, establish, mandate, or otherwise**
64 **implement any law, ordinance, or regulation in conflict with the provisions of this section.**

287.020. 1. The word "employee" as used in this chapter shall be construed to mean
2 every person in the service of any employer, as defined in this chapter, under any contract of hire,
3 express or implied, oral or written, or under any appointment or election, including executive
4 officers of corporations. Except as otherwise provided in section 287.200, any reference to any
5 employee who has been injured shall, when the employee is dead, also include his or her
6 dependents, and other persons to whom compensation may be payable. The word "employee"
7 shall also include all minors who work for an employer, whether or not such minors are
8 employed in violation of law, and all such minors are hereby made of full age for all purposes
9 under, in connection with, or arising out of this chapter. The word "employee" shall not include

10 an individual who is the owner, as defined in section 301.010, and operator of a motor vehicle
11 which is leased or contracted with a driver to a for-hire motor carrier operating within a
12 commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued
13 by the Missouri department of transportation or by the United States Department of
14 Transportation, or any of its subagencies. The word "employee" also shall not include any
15 person performing services for board, lodging, aid, or sustenance received from any religious,
16 charitable, or relief organization. **The division shall refer to section 285.517 to determine**
17 **whether a person is an independent contractor.**

18 2. The word "accident" as used in this chapter shall mean an unexpected traumatic event
19 or unusual strain identifiable by time and place of occurrence and producing at the time objective
20 symptoms of an injury caused by a specific event during a single work shift. An injury is not
21 compensable because work was a triggering or precipitating factor.

22 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
23 out of and in the course of employment. An injury by accident is compensable only if the
24 accident was the prevailing factor in causing both the resulting medical condition and disability.
25 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
26 both the resulting medical condition and disability.

27 (2) An injury shall be deemed to arise out of and in the course of the employment only
28 if

29 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
30 accident is the prevailing factor in causing the injury; and

31 (b) It does not come from a hazard or risk unrelated to the employment to which workers
32 would have been equally exposed outside of and unrelated to the employment in normal
33 nonemployment life.

34 (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

35 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular
36 accident or myocardial infarction suffered by a worker is an injury only if the accident is the
37 prevailing factor in causing the resulting medical condition.

38 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
39 structure of the body and to the personal property which is used to make up the physical structure
40 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other
41 prostheses which are placed in or on the body to replace the physical structure and such disease
42 or infection as naturally results therefrom. These terms shall in no case except as specifically
43 provided in this chapter be construed to include occupational disease in any form, nor shall they
44 be construed to include any contagious or infectious disease contracted during the course of the

45 employment, nor shall they include death due to natural causes occurring while the worker is at
46 work.

47 4. "Death" when mentioned as a basis for the right to compensation means only death
48 resulting from such violence and its resultant effects occurring within three hundred weeks after
49 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
50 shall not be applicable.

51 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
52 occur while traveling from the employee's home to the employer's principal place of business or
53 from the employer's principal place of business to the employee's home are not compensable.
54 The extension of premises doctrine is abrogated to the extent it extends liability for accidents that
55 occur on property not owned or controlled by the employer even if the accident occurs on
56 customary, approved, permitted, usual or accepted routes used by the employee to get to and
57 from their place of employment.

58 6. The term "total disability" as used in this chapter shall mean inability to return to any
59 employment and not merely mean inability to return to the employment in which the employee
60 was engaged at the time of the accident.

61 7. As used in this chapter and all acts amendatory thereof, the term "commission" shall
62 hereafter be construed as meaning and referring exclusively to the labor and industrial relations
63 commission of Missouri, and the term "director" shall hereafter be construed as meaning the
64 director of the department of commerce and insurance of the state of Missouri or such agency
65 of government as shall exercise the powers and duties now conferred and imposed upon the
66 department of commerce and insurance of the state of Missouri.

67 8. The term "division" as used in this chapter means the division of workers'
68 compensation of the department of labor and industrial relations of the state of Missouri.

69 9. For the purposes of this chapter, the term "minor" means a person who has not
70 attained the age of eighteen years; except that, for the purpose of computing the compensation
71 provided for in this chapter, the provisions of section 287.250 shall control.

72 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
73 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
74 "occupational disease", "arising out of", and "in the course of the employment" to include, but
75 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d
76 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and
77 *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
78 following those cases.

79 11. For the purposes of this chapter, "occupational diseases due to toxic exposure" shall
80 only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis,

81 bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia,
82 and myelodysplastic syndrome.

83 12. For the purposes of this chapter, "maximum medical improvement" shall mean the
84 point at which the injured employee's medical condition has stabilized and can no longer
85 reasonably improve with additional medical care, as determined within a reasonable degree of
86 medical certainty.

288.034. 1. "Employment" means service, including service in interstate commerce,
2 performed for wages or under any contract of hire, written or oral, express or implied, and
3 notwithstanding any other provisions of this section, service with respect to which a tax is
4 required to be paid under any federal unemployment tax law imposing a tax against which credit
5 may be taken for contributions required to be paid into a state unemployment fund or which, as
6 a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act,
7 is required to be covered under this law.

8 2. The term "employment" shall include an individual's entire service, performed within
9 or both within and without this state if:

10 (1) The service is localized in this state; or

11 (2) The service is not localized in any state but some of the service is performed in this
12 state and the base of operations, or, if there is no base of operations, then the place from which
13 such service is directed or controlled, is in this state; or the base of operations or place from
14 which such service is directed or controlled is not in any state in which some part of the service
15 is performed but the individual's residence is in this state.

16 3. Service performed by an individual for wages shall be deemed to be employment
17 subject to this law:

18 (1) If covered by an election filed and approved pursuant to subdivision (2) of subsection
19 3 of section 288.080;

20 (2) If covered by an arrangement pursuant to section 288.340 between the division and
21 the agency charged with the administration of any other state or federal unemployment insurance
22 law, pursuant to which all services performed by an individual for an employing unit are deemed
23 to be performed entirely within this state.

24 4. Service shall be deemed to be localized within a state if the service is performed
25 entirely within such state; or the service is performed both within and without such state, but the
26 service performed without such state is incidental to the individual's service within the state; for
27 example, is temporary or transitory in nature or consists of isolated transactions.

28 5. Service performed by an individual for remuneration shall be deemed to be
29 employment subject to this law unless it is shown to the satisfaction of the division that such
30 services were performed by an independent contractor. In determining the existence of the

31 independent contractor relationship, the ~~[common law of agency right to control shall be applied.~~
32 ~~The common law of agency right to control test shall include but not be limited to: if the alleged~~
33 ~~employer retains the right to control the manner and means by which the results are to be~~
34 ~~accomplished, the individual who performs the service is an employee. If only the results are~~
35 ~~controlled, the individual performing the service is an independent contractor]~~ **division shall**
36 **refer to section 285.517 to determine whether a person is an independent contractor.**

37 6. The term "employment" shall include service performed for wages as an agent-driver
38 or commission-driver engaged in distributing meat products, vegetable products, fruit products,
39 bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his or her
40 principal; or as a traveling or city salesman, other than as an agent-driver or commission-driver,
41 engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her
42 principal (except for sideline sales activities on behalf of some other person) of orders from
43 wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar
44 establishments for merchandise for resale or supplies for use in their business operations,
45 provided:

46 (1) The contract of service contemplates that substantially all of the services are to be
47 performed personally by such individual; and

48 (2) The individual does not have a substantial investment in facilities used in connection
49 with the performance of the services (other than in facilities for transportation); and

50 (3) The services are not in the nature of a single transaction that is not part of a
51 continuing relationship with the person for whom the services are performed.

52 7. Service performed by an individual in the employ of this state or any political
53 subdivision thereof or any instrumentality of any one or more of the foregoing which is wholly
54 owned by this state and one or more other states or political subdivisions, or any service
55 performed in the employ of any instrumentality of this state or of any political subdivision
56 thereof, and one or more other states or political subdivisions, provided that such service is
57 excluded from employment as defined in the Federal Unemployment Tax Act by Section
58 3306(c)(7) of that act and is not excluded from employment pursuant to subsection 9 of this
59 section, shall be employment subject to this law.

60 8. Service performed by an individual in the employ of a corporation or any community
61 chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific,
62 testing for public safety, literary, or educational purposes, or for the prevention of cruelty to
63 children or animals, no part of the net earnings of which inures to the benefit of any private
64 shareholder or individual, or other organization described in Section 501(c)(3) of the Internal
65 Revenue Code which is exempt from income tax under Section 501(a) of that code if the
66 organization had four or more individuals in employment for some portion of a day in each of

67 twenty different weeks whether or not such weeks were consecutive within a calendar year
68 regardless of whether they were employed at the same moment of time shall be employment
69 subject to this law.

70 9. For the purposes of subsections 7 and 8 of this section, the term "employment" does
71 not apply to service performed:

72 (1) In the employ of a church or convention or association of churches, or an
73 organization which is operated primarily for religious purposes and which is operated,
74 supervised, controlled, or principally supported by a church or convention or association of
75 churches; or

76 (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise
77 of such minister's ministry or by a member of a religious order in the exercise of duties required
78 by such order; or

79 (3) In the employ of a governmental entity referred to in subdivision (3) of subsection
80 1 of section 288.032 if such service is performed by an individual in the exercise of duties:

81 (a) As an elected official;

82 (b) As a member of a legislative body, or a member of the judiciary, of a state or political
83 subdivision;

84 (c) As a member of the state National Guard or Air National Guard;

85 (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake,
86 flood or similar emergency;

87 (e) In a position which, under or pursuant to the laws of this state, is designated as (i) a
88 major nontenured policy-making or advisory position, or (ii) a policy-making or advisory
89 position the performance of the duties of which ordinarily does not require more than eight hours
90 per week; or

91 (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for
92 individuals whose earning capacity is impaired by age or physical or mental deficiency or injury
93 or providing remunerative work for individuals who because of their impaired physical or mental
94 capacity cannot be readily absorbed in the competitive labor market, by an individual receiving
95 such rehabilitation or remunerative work; or

96 (5) As part of an unemployment work-relief or work-training program assisted or
97 financed in whole or in part by any federal agency or an agency of a state or political subdivision
98 thereof, by an individual receiving such work relief or work training; or

99 (6) By an inmate of a custodial or penal institution; or

100 (7) In the employ of a school, college, or university, if such service is performed (i) by
101 a student who is enrolled and is regularly attending classes at such school, college, or university,
102 or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse

103 commences to perform such service, that (I) the employment of such spouse to perform such
104 service is provided under a program to provide financial assistance to such student by such
105 school, college, or university, and (II) such employment will not be covered by any program of
106 unemployment insurance.

107 10. The term "employment" shall include the service of an individual who is a citizen
108 of the United States, performed outside the United States (except in Canada), if:

109 (1) The employer's principal place of business in the United States is located in this state;

110 or

111 (2) The employer has no place of business in the United States, but:

112 (a) The employer is an individual who is a resident of this state; or

113 (b) The employer is a corporation which is organized under the laws of this state; or

114 (c) The employer is a partnership or a trust and the number of the partners or trustees
115 who are residents of this state is greater than the number who are residents of any one other state;

116 or

117 (3) None of the criteria of subdivisions (1) and (2) of this subsection is met but the
118 employer has elected coverage in this state or, the employer having failed to elect coverage in
119 any state, the individual has filed a claim for benefits, based on such service, under the law of
120 this state;

121 (4) As used in this subsection and in subsection 11 of this section, the term "United
122 States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

123 11. An "American employer", for the purposes of subsection 10 of this section, means
124 a person who is:

125 (1) An individual who is a resident of the United States; or

126 (2) A partnership, if two-thirds or more of the partners are residents of the United States;

127 or

128 (3) A trust, if all of the trustees are residents of the United States; or

129 (4) A corporation organized under the laws of the United States or of any state.

130 12. The term "employment" shall not include:

131 (1) Service performed by an individual in agricultural labor;

132 (a) For the purposes of this subdivision, the term "agricultural labor" means remunerated
133 service performed:

134 a. On a farm, in the employ of any person, in connection with cultivating the soil, or in
135 connection with raising or harvesting any agricultural or horticultural commodity, including the
136 raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and
137 furbearing animals and wildlife;

138 b. In the employ of the owner or tenant or other operator of a farm, in connection with
139 the operation, management, conservation, improvement, or maintenance of such farm and its
140 tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a
141 hurricane, if the major part of such service is performed on a farm;

142 c. In connection with the production or harvesting of any commodity defined as an
143 agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as amended
144 (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the ginning of cotton, or in
145 connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not
146 owned or operated for profit, used exclusively for supplying and storing water for farming
147 purposes;

148 d. (i) In the employ of the operator of a farm in handling, planting, drying, packing,
149 packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a
150 carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural
151 commodity; but only if such operator produced more than one-half of the commodity with
152 respect to which such service is performed;

153 (ii) In the employ of a group of operators of farms (or a cooperative organization of
154 which such operators are members) in the performance of services described in item (i) of this
155 subparagraph, but only if such operators produced more than one-half of the commodity with
156 respect to which such service is performed;

157 (iii) The provisions of items (i) and (ii) of this subparagraph shall not be deemed to be
158 applicable with respect to service performed in connection with commercial canning or
159 commercial freezing or in connection with any agricultural or horticultural commodity after its
160 delivery to a terminal market for distribution for consumption; or

161 e. On a farm operated for profit if such service is not in the course of the employer's trade
162 or business. As used in this paragraph, the term "farm" includes stock, dairy, poultry, fruit,
163 furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other
164 similar structures, used primarily for the raising of agricultural or horticultural commodities, and
165 orchards;

166 (b) The term "employment" shall include service performed after December 31, 1977,
167 by an individual in agricultural labor as defined in paragraph (a) of this subdivision when such
168 service is performed for a person who, during any calendar quarter, paid remuneration in cash
169 of twenty thousand dollars or more to individuals employed in agricultural labor or for some
170 portion of a day in a calendar year in each of twenty different calendar weeks, whether or not
171 such weeks were consecutive, employed in agricultural labor ten or more individuals, regardless
172 of whether they were employed at the same moment of time;

173 (c) For the purposes of this subsection any individual who is a member of a crew
174 furnished by a crew leader to perform service in agricultural labor for any other person shall be
175 considered as employed by such crew leader:

176 a. If such crew leader holds a valid certificate of registration under the Farm Labor
177 Contractor Registration Act of 1963; or substantially all the members of such crew operate or
178 maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized
179 equipment, which is provided by such crew leader; and

180 b. If such individual is not in employment by such other person;

181 c. If any individual is furnished by a crew leader to perform service in agricultural labor
182 for any other person and that individual is not in the employment of the crew leader:

183 (i) Such other person and not the crew leader shall be treated as the employer of such
184 individual; and

185 (ii) Such other person shall be treated as having paid cash remuneration to such
186 individual in an amount equal to the amount of cash remuneration paid to such individual by the
187 crew leader (either on his or her own behalf or on behalf of such other person) for the service in
188 agricultural labor performed for such other person;

189 d. For the purposes of this subsection, the term "crew leader" means an individual who:

190 (i) Furnishes individuals to perform service in agricultural labor for any other person;

191 (ii) Pays (either on his or her own behalf or on behalf of such other person) the
192 individuals so furnished by him or her for the service in agricultural labor performed by them;
193 and

194 (iii) Has not entered into a written agreement with such other person under which such
195 individual is designated as in employment by such other person;

196 (2) Domestic service in a private home except as provided in subsection 13 of this
197 section;

198 (3) Service performed by an individual under the age of eighteen years in the delivery
199 or distribution of newspapers or shopping news but shall not include delivery or distribution to
200 any point for subsequent delivery or distribution;

201 (4) Service performed by an individual in, and at the time of, the sale of newspapers or
202 magazines to ultimate consumers under an arrangement under which the newspapers or
203 magazines are to be sold by him or her at a fixed price, his or her compensation being based on
204 the retention of the excess of such price over the amount at which the newspapers or magazines
205 are charged to him or her, whether or not he or she is guaranteed a minimum amount of
206 compensation for such service, or is entitled to be credited with the unsold newspapers or
207 magazines turned back;

208 (5) Service performed by an individual in the employ of his or her son, daughter, or
209 spouse, and service performed by a child under the age of twenty-one in the employ of his or her
210 father or mother;

211 (6) Except as otherwise provided in this law, service performed in the employ of a
212 corporation, community chest, fund or foundation, organized and operated exclusively for
213 religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty
214 to children or animals, no part of the net earnings of which inures to the benefit of any private
215 shareholder or individual;

216 (7) Services with respect to which unemployment insurance is payable under an
217 unemployment insurance system established by an act of Congress;

218 (8) Service performed in the employ of a foreign government;

219 (9) Service performed in the employ of an instrumentality wholly owned by a foreign
220 government:

221 (a) If the service is of a character similar to that performed in foreign countries by
222 employees of the United States government or of an instrumentality thereof; and

223 (b) If the division finds that the foreign government, with respect to whose
224 instrumentality exemption is claimed, grants an equivalent exemption with respect to similar
225 service performed in the foreign country by employees of the United States government and of
226 instrumentalities thereof. The certification of the United States Secretary of State to the United
227 States Secretary of Treasury shall constitute prima facie evidence of such equivalent exemption;

228 (10) Service covered by an arrangement between the division and the agency charged
229 with the administration of any other state or federal unemployment insurance law pursuant to
230 which all services performed by an individual for an employing unit during the period covered
231 by the employing unit's approved election are deemed to be performed entirely within the
232 jurisdiction of such other state or federal agency;

233 (11) Service performed in any calendar quarter in the employ of a school, college or
234 university not otherwise excluded, if such service is performed by a student who is enrolled and
235 regularly attending classes at such school, college, or university, and the remuneration for such
236 service does not exceed fifty dollars (exclusive of board, room, and tuition);

237 (12) Service performed by an individual for a person as a licensed insurance agent, a
238 licensed insurance broker, or an insurance solicitor, if all such service performed by such
239 individual for such person is performed for remuneration solely by way of commissions;

240 (13) Domestic service performed in the employ of a local college club or of a local
241 chapter of a college fraternity or sorority, except as provided in subsection 13 of this section;

242 (14) Services performed after March 31, 1982, in programs authorized and funded by
243 the Comprehensive Employment and Training Act by participants of such programs, except those

244 programs with respect to which unemployment insurance coverage is required by the
245 Comprehensive Employment and Training Act or regulations issued pursuant thereto;

246 (15) Service performed by an individual who is enrolled at a nonprofit or public
247 educational institution which normally maintains a regular faculty and curriculum and normally
248 has a regularly organized body of students in attendance at the place where its educational
249 activities are carried on, as a student in a full-time program, taken for credit at such institution,
250 which combines academic instruction with work experience, if such service is an integral part
251 of such program, and such institution has so certified to the employer; except, that this
252 subdivision shall not apply to service performed in a program established for or on behalf of an
253 employer or group of employers;

254 (16) Services performed by a licensed real estate salesperson or licensed real estate
255 broker if substantially all of the remuneration, whether or not paid in cash, for the services
256 performed, rather than to the number of hours worked, is directly related to sales or other output,
257 including the performance of services, performed pursuant to a written contract between such
258 individual and the person for whom the services are performed and such contract provides that
259 the individual will not be treated as an employee with respect to such services for federal tax
260 purposes;

261 (17) Services performed as a direct seller who is engaged in the trade or business of the
262 delivering or distribution of newspapers or shopping news, including any services directly related
263 to such trade or business, or services performed as a direct seller who is engaged in the trade or
264 business of selling, or soliciting the sale of, consumer products in the home or otherwise than in,
265 or affiliated with, a permanent, fixed retail establishment, if eighty percent or more of the
266 remuneration, whether or not paid in cash, for the services performed rather than the number of
267 hours worked is directly related to sales performed pursuant to a written contract between such
268 direct seller and the person for whom the services are performed, and such contract provides that
269 the individual will not be treated as an employee with respect to such services for federal tax
270 purposes;

271 (18) Services performed as a volunteer research subject who is paid on a per-study basis
272 for scientific, medical or drug-related testing for any organization other than one described in
273 Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

274 13. The term "employment" shall include domestic service as defined in subdivisions
275 (2) and (13) of subsection 12 of this section performed after December 31, 1977, if the
276 employing unit for which such service is performed paid cash wages of one thousand dollars or
277 more for such services in any calendar quarter after December 31, 1977.

278 14. The term "employment" shall include or exclude the entire service of an individual
279 for an employing unit during a pay period in which such individual's services are not all excluded

280 under the foregoing provisions, on the following basis: if the services performed during one-half
281 or more of any pay period constitute employment as otherwise defined in this law, all the
282 services performed during such period shall be deemed to be employment; but if the services
283 performed during more than one-half of any such pay period do not constitute employment as
284 otherwise defined in this law, then none of the services for such period shall be deemed to be
285 employment. (As used in this subsection, the term "pay period" means a period of not more than
286 thirty-one consecutive days for which a payment of remuneration is ordinarily made to the
287 individual by the employing unit employing such individual.) This subsection shall not be
288 applicable with respect to service performed in a pay period where any such service is excluded
289 pursuant to subdivision (8) of subsection 12 of this section.

290 15. The term "employment" shall not include the services of a full-time student who
291 performed such services in the employ of an organized summer camp for less than thirteen
292 calendar weeks in such calendar year.

293 16. For the purpose of subsection 15 of this section, an individual shall be treated as a
294 full-time student for any period:

295 (1) During which the individual is enrolled as a full-time student at an educational
296 institution; or

297 (2) Which is between academic years or terms if:

298 (a) The individual was enrolled as a full-time student at an educational institution for the
299 immediately preceding academic year or term; and

300 (b) There is a reasonable assurance that the individual will be so enrolled for the
301 immediately succeeding academic year or term after the period described in paragraph (a) of this
302 subdivision.

303 17. For the purpose of subsection 15 of this section, an "organized summer camp" shall
304 mean a summer camp which:

305 (1) Did not operate for more than seven months in the calendar year and did not operate
306 for more than seven months in the preceding calendar year; or

307 (2) Had average gross receipts for any six months in the preceding calendar year which
308 were not more than thirty-three and one-third percent of its average gross receipts for the other
309 six months in the preceding calendar year.

310 18. The term "employment" shall not mean service performed by a remodeling
311 salesperson acting as an independent contractor; however, if the federal Internal Revenue Service
312 determines that a contractual relationship between a direct provider and an individual acting as
313 an independent contractor pursuant to the provisions of this subsection is in fact an employer-
314 employee relationship for the purposes of federal law, then that relationship shall be considered
315 as an employer-employee relationship for the purposes of this chapter.

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