

---

**SUBSTITUTE HOUSE BILL 3122**

---

**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan, and McIntire)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to consolidating, aligning, and clarifying  
2 exception tests for determination of independent contractor status  
3 under unemployment compensation and workers' compensation laws;  
4 amending RCW 50.04.145, 51.08.070, 51.08.180, and 51.08.195; and adding  
5 a new section to chapter 51.08 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 50.04.145 and 1983 1st ex.s. c 23 s 25 are each  
8 amended to read as follows:

9 The term "employment" shall not include services rendered by any  
10 (~~person, firm, or corporation~~) individual currently engaging in a  
11 business that requires registration under chapter 18.27 RCW or  
12 licensing under chapter 19.28 RCW and which is registered under chapter  
13 18.27 RCW or licensed under chapter 19.28 RCW when:

14 (1) (~~Contracting to perform work for any contractor registered~~  
15 ~~under chapter 18.27 RCW or licensed under chapter 19.28 RCW~~) The  
16 individual has been and will continue to be free from control or  
17 direction over the performance of the service, both under the contract  
18 of service and in fact;

1       ~~(2) ((The person, firm, or corporation has a principal place of~~  
2 ~~business which would be eligible for a business deduction for internal~~  
3 ~~revenue service tax purposes other than that furnished by the~~  
4 ~~contractor for which the business has contracted to furnish services))~~  
5 The service is either outside the usual course of business for which  
6 the service is performed, or the service is performed outside of all  
7 the places of business of the enterprise for which the service is  
8 performed, or the individual is responsible, both under the contract  
9 and in fact, for the costs of the principal place of business from  
10 which the service is performed;

11       ~~(3) ((The person, firm, or corporation maintains))~~ The individual  
12 is customarily engaged in an independently established trade,  
13 occupation, profession, or business, of the same nature as that  
14 involved in the contract of service, or the individual has a principal  
15 place of business for the business the individual is conducting that is  
16 eligible for a business deduction for federal income tax purposes,  
17 other than that furnished by the employer for which the business has  
18 contracted to furnish services;

19       (4) On the effective date of the contract of service, the  
20 individual is responsible for filing at the next applicable filing  
21 period, both under the contract of service and in fact, a schedule of  
22 expenses with the internal revenue service for the type of business the  
23 individual is conducting;

24       (5) On the effective date of the contract of service, or within a  
25 reasonable period after the effective date of the contract, the  
26 individual has an active and valid certificate of registration with the  
27 department of revenue, and an active and valid account with any other  
28 state agencies as required by the particular case, for the business the  
29 individual is conducting for the payment of all state taxes normally  
30 paid by employers and businesses and has registered for and received a  
31 unified business identifier number from the state of Washington;

32       (6) On the effective date of the contract of service, the  
33 individual is maintaining a separate set of books or records that  
34 reflect all items of income and expenses of the business that the  
35 individual is conducting; and

36       ~~((4) The work which the person, firm, or corporation has~~  
37 ~~contracted to perform is:~~

38       ~~(a) The work of a contractor as defined in RCW 18.27.010; or~~

1       ~~(b) The work of installing wires or equipment to convey electric~~  
2 ~~current or installing apparatus to be operated by such current as it~~  
3 ~~pertains to the electrical industry as described in chapter 19.28 RCW;~~  
4 ~~and~~

5       ~~(5) A contractor registered under chapter 18.27 RCW or licensed~~  
6 ~~under chapter 19.28 RCW does not supervise or control the means by~~  
7 ~~which the result is accomplished or the manner in which the work is~~  
8 ~~performed))~~

9       (7) On the effective date of the contract of service, the  
10 individual must have a valid contractor registration or electrical  
11 contractor license.

12       **Sec. 2.** RCW 51.08.070 and 1991 c 246 s 2 are each amended to read  
13 as follows:

14       "Employer" means any person, body of persons, corporate or  
15 otherwise, and the legal representatives of a deceased employer, all  
16 while engaged in this state in any work covered by the provisions of  
17 this title, by way of trade or business, or who contracts with one or  
18 more workers, the essence of which is the personal labor of such worker  
19 or workers. Or as ~~((a separate alternative,))~~ an exception to the  
20 definition of employer, persons or entities are not employers when they  
21 contract or agree to remunerate the services performed by an individual  
22 who meets the tests set forth in subsections (1) through (6) of RCW  
23 51.08.195 or the separate tests set forth in section 5 of this act for  
24 work done by a contractor registered under chapter 18.27 RCW or  
25 licensed under chapter 19.28 RCW.

26       ~~((For the purposes of this title, a contractor registered under~~  
27 ~~chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an~~  
28 ~~employer when:~~

29       ~~(1) Contracting with any other person, firm, or corporation~~  
30 ~~currently engaging in a business which is registered under chapter~~  
31 ~~18.27 RCW or licensed under chapter 19.28 RCW;~~

32       ~~(2) The person, firm, or corporation has a principal place of~~  
33 ~~business which would be eligible for a business deduction for internal~~  
34 ~~revenue service tax purposes other than that furnished by the~~  
35 ~~contractor for which the business has contracted to furnish services;~~

36       ~~(3) The person, firm, or corporation maintains a separate set of~~

1 ~~books or records that reflect all items of income and expenses of the~~  
2 ~~business; and~~

3 ~~(4) The work which the person, firm, or corporation has contracted~~  
4 ~~to perform is:~~

5 ~~(a) The work of a contractor as defined in RCW 18.27.010; or~~

6 ~~(b) The work of installing wires or equipment to convey electric~~  
7 ~~current or installing apparatus to be operated by such current as it~~  
8 ~~pertains to the electrical industry as described in chapter 19.28~~  
9 ~~RCW.)~~

10 **Sec. 3.** RCW 51.08.180 and 1991 c 246 s 3 are each amended to read  
11 as follows:

12 ~~((1))~~ "Worker" means every person in this state who is engaged in  
13 the employment of an employer under this title, whether by way of  
14 manual labor or otherwise in the course of his or her employment; also  
15 every person in this state who is engaged in the employment of or who  
16 is working under an independent contract, the essence of which is his  
17 or her personal labor for an employer under this title, whether by way  
18 of manual labor or otherwise, in the course of his or her employment,  
19 or as ~~((a separate alternative,))~~ an exception to the definition of  
20 worker, a person is not a worker if he or she meets the tests set forth  
21 in subsections (1) through (6) of RCW 51.08.195 or the separate tests  
22 set forth in section 5 of this act for work done by a contractor  
23 registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW:  
24 PROVIDED, That a person is not a worker for the purpose of this title,  
25 with respect to his or her activities attendant to operating a truck  
26 which he or she owns, and which is leased to a common or contract  
27 carrier.

28 ~~((2) For the purposes of this title, any person, firm, or~~  
29 ~~corporation currently engaging in a business which is registered under~~  
30 ~~chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker~~  
31 ~~when:~~

32 ~~(a) Contracting to perform work for any contractor registered under~~  
33 ~~chapter 18.27 RCW or licensed under chapter 19.28 RCW;~~

34 ~~(b) The person, firm, or corporation has a principal place of~~  
35 ~~business which would be eligible for a business deduction for internal~~  
36 ~~revenue service tax purposes other than that furnished by the~~  
37 ~~contractor for which the business has contracted to furnish services;~~

1       ~~(c) The person, firm, or corporation maintains a separate set of~~  
2 ~~books or records that reflect all items of income and expenses of the~~  
3 ~~business; and~~

4       ~~(d) The work which the person, firm, or corporation has contracted~~  
5 ~~to perform is:~~

6       ~~(i) The work of a contractor as defined in RCW 18.27.010; or~~

7       ~~(ii) The work of installing wires or equipment to convey electric~~  
8 ~~current or installing apparatus to be operated by such current as it~~  
9 ~~pertains to the electrical industry as described in chapter 19.28 RCW.~~

10       ~~(3) Any person, firm, or corporation registered under chapter 18.27~~  
11 ~~RCW or licensed under chapter 19.28 RCW including those performing work~~  
12 ~~for any contractor registered under chapter 18.27 RCW or licensed under~~  
13 ~~chapter 19.28 RCW is a worker when the contractor supervises or~~  
14 ~~controls the means by which the result is accomplished or the manner in~~  
15 ~~which the work is performed.~~

16       ~~(4) For the purposes of this title, any person participating as a~~  
17 ~~driver or back-up driver in commuter ride sharing, as defined in RCW~~  
18 ~~46.74.010(1), is not a worker while driving a ride sharing vehicle on~~  
19 ~~behalf of the owner or lessee of the vehicle.))~~

20       **Sec. 4.** RCW 51.08.195 and 1991 c 246 s 1 are each amended to read  
21 as follows:

22       As ((~~a separate alternative~~)) an exception to the definition of  
23 "employer" under RCW 51.08.070 and the definition of "worker" under RCW  
24 51.08.180, services performed by an individual for remuneration shall  
25 not constitute employment subject to this title if it is shown that:

26       (1) The individual has been and will continue to be free from  
27 control or direction over the performance of the service, both under  
28 the contract of service and in fact; and

29       (2) The service is either outside the usual course of business for  
30 which the service is performed, or the service is performed outside all  
31 of the places of business of the enterprise for which the service is  
32 performed, or the individual is responsible, both under the contract  
33 and in fact, for the costs of the principal place of business from  
34 which the service is performed; and

35       (3) The individual is customarily engaged in an independently  
36 established trade, occupation, profession, or business, of the same  
37 nature as that involved in the contract of service, or the individual

1 has a principal place of business for the business the individual is  
2 conducting that is eligible for a business deduction for federal income  
3 tax purposes; and

4 (4) On the effective date of the contract of service, the  
5 individual is responsible for filing at the next applicable filing  
6 period, both under the contract of service and in fact, a schedule of  
7 expenses with the internal revenue service for the type of business the  
8 individual is conducting; and

9 (5) On the effective date of the contract of service, or within a  
10 reasonable period after the effective date of the contract, the  
11 individual has established an account with the department of revenue,  
12 and other state agencies as required by the particular case, for the  
13 business the individual is conducting for the payment of all state  
14 taxes normally paid by employers and businesses and has registered for  
15 and received a unified business identifier number from the state of  
16 Washington; and

17 (6) On the effective date of the contract of service, the  
18 individual is maintaining a separate set of books or records that  
19 reflect all items of income and expenses of the business which the  
20 individual is conducting.

21 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.08 RCW  
22 to read as follows:

23 For the purposes of this title, any individual performing services  
24 for remuneration under an independent contract and who is registered  
25 under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a  
26 worker when:

27 (1) The individual has been, and will continue to be, free from  
28 control or direction over the performance of the service, both under  
29 the contract of service and in fact;

30 (2) The service is either outside the usual course of business for  
31 which the service is performed, or the service is performed outside all  
32 of the places of business of the enterprise for which the service is  
33 performed, or the individual is responsible, both under the contract  
34 and in fact, for the costs of the principal place of business from  
35 which the service is performed;

36 (3) The individual is customarily engaged in an independently  
37 established trade, occupation, profession, or business, of the same

1 nature as that involved in the contract of service, or the individual  
2 has a principal place of business for the business the individual is  
3 conducting that is eligible for a business deduction for federal income  
4 tax purposes other than that furnished by the employer for which the  
5 business has contracted to furnish services;

6 (4) On the effective date of the contract of service, the  
7 individual is responsible for filing at the next applicable filing  
8 period, both under the contract of service and in fact, a schedule of  
9 expenses with the internal revenue service for the type of business the  
10 individual is conducting;

11 (5) On the effective date of the contract of service, or within a  
12 reasonable period after the effective date of the contract, the  
13 individual has an active and valid certificate of registration with the  
14 department of revenue, and an active and valid account with any other  
15 state agencies as required by the particular case, for the business the  
16 individual is conducting for the payment of all state taxes normally  
17 paid by employers and businesses and has registered for and received a  
18 unified business identifier number from the state of Washington;

19 (6) On the effective date of the contract of service, the  
20 individual is maintaining a separate set of books or records that  
21 reflect all items of income and expenses of the business which the  
22 individual is conducting; and

23 (7) On the effective date of the contract of service, the  
24 individual must have a valid contractor registration or electrical  
25 contractor license.

--- END ---