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HOUSE BILL 3122

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State of Washington

60th Legislature

2008 Regular Session

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 01/22/08. Referred to Committee on Commerce & Labor.

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 50.04.100, 50.04.140, 51.08.070, 51.08.180, and 51.08.195;  
5 creating a new section; and repealing RCW 50.04.145.

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

7 **Sec. 1.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each  
8 amended to read as follows:

9 "Employment", subject only to the other provisions of this title,  
10 means personal service, of whatever nature, unlimited by the  
11 relationship of master and servant as known to the common law or any  
12 other legal relationship, including service in interstate commerce,  
13 performed for wages or under any contract calling for the performance  
14 of personal services, written or oral, express or implied.

15 ((~~Except as provided by RCW 50.04.145,~~)) Personal services  
16 performed for an employing unit by one or more contractors or  
17 subcontractors acting individually or as a partnership, which do not  
18 meet the provisions of RCW 50.04.140, shall be considered employment of  
19 the employing unit: PROVIDED, HOWEVER, That such contractor or

1 subcontractor shall be an employer under the provisions of this title  
2 in respect to personal services performed by individuals for such  
3 contractor or subcontractor.

4 **Sec. 2.** RCW 50.04.140 and 1991 c 246 s 6 are each amended to read  
5 as follows:

6 (1) This section establishes the test for work done by independent  
7 contract that is an exception to the definition of "employment" under  
8 RCW 50.04.100.

9 (2) Services performed by an individual for remuneration shall be  
10 deemed to be employment subject to this title unless such work is  
11 performed by independent contract and until it is shown to the  
12 satisfaction of the commissioner that:

13 ~~((1)(a) Such individual has been and will continue to be free from~~  
14 ~~control or direction over the performance of such service, both under~~  
15 ~~his or her contract of service and in fact; and~~

16 ~~(b) Such service is either outside the usual course of business for~~  
17 ~~which such service is performed, or that such service is performed~~  
18 ~~outside of all the places of business of the enterprises for which such~~  
19 ~~service is performed; and~~

20 ~~(c) Such individual is customarily engaged in an independently~~  
21 ~~established trade, occupation, profession, or business, of the same~~  
22 ~~nature as that involved in the contract of service.~~

23 ~~(2) Or as a separate alternative, it shall not constitute~~  
24 ~~employment subject to this title if it is shown that:))~~

25 (a) Such individual has been and will continue to be free from  
26 control or direction over the performance of such service, both under  
27 his or her contract of service and in fact. For any person, firm, or  
28 corporation registered under chapter 18.27 RCW or licensed under  
29 chapter 19.28 RCW including those performing work for any contractor  
30 registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW,  
31 control or direction is defined as the means by which the result is  
32 accomplished or the manner in which the work is performed; and

33 (b) Such service is either outside the usual course of business for  
34 which such service is performed, or that such service is performed  
35 outside of all the places of business of the enterprises for which such  
36 service is performed, or the individual is responsible, both under the

1 contract and in fact, for the costs of the principal place of business  
2 from which the service is performed; and

3 (c) Such individual is customarily engaged in an independently  
4 established trade, occupation, profession, or business, of the same  
5 nature as that involved in the contract of service, or such individual  
6 has a principal place of business for the work the individual is  
7 conducting, other than that furnished by the employer for which the  
8 business has contracted to furnish services, that is eligible for a  
9 business deduction for federal income tax purposes; and

10 (d) On the effective date of the contract of service, such  
11 individual is responsible for filing at the next applicable filing  
12 period, both under the contract of service and in fact, a schedule of  
13 expenses with the internal revenue service for the type of business the  
14 individual is conducting; and

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

24 (f) On the effective date of the contract of service, such  
25 individual is maintaining a separate set of books or records that  
26 reflect all items of income and expenses of the business which the  
27 individual is conducting; and

28 (g) On the effective date of the contract of service, any person,  
29 firm, or corporation engaging in work that requires registration under  
30 chapter 18.27 RCW or licensing under chapter 19.28 RCW has a valid  
31 contractor registration or electrical contractor license.

32 **Sec. 3.** RCW 51.08.070 and 1991 c 246 s 2 are each amended to read  
33 as follows:

34 "Employer" means any person, body of persons, corporate or  
35 otherwise, and the legal representatives of a deceased employer, all  
36 while engaged in this state in any work covered by the provisions of  
37 this title, by way of trade or business, or who contracts with one or

1 more workers, the essence of which is the personal labor of such worker  
2 or workers. (~~(Or as a separate alternative,~~) Persons or entities are  
3 not employers (~~(when they contract or agree to remunerate the services~~  
4 ~~performed by an individual who meets))~~ of an individual who meets the  
5 tests set forth in (~~(subsections (1) through (6) of)~~) RCW 51.08.195 (1)  
6 through (7).

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

10 ~~(1) Contracting with any other person, firm, or corporation~~  
11 ~~currently engaging in a business which is registered under chapter~~  
12 ~~18.27 RCW or licensed under chapter 19.28 RCW;~~

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

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

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

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

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

27 **Sec. 4.** RCW 51.08.180 and 1991 c 246 s 3 are each amended to read  
28 as follows:

29 (1) "Worker" means every person in this state who is engaged in the  
30 employment of an employer under this title, whether by way of manual  
31 labor or otherwise in the course of his or her employment; also every  
32 person in this state who is engaged in the employment of or who is  
33 working under an independent contract, the essence of which is his or  
34 her personal labor for an employer under this title, whether by way of  
35 manual labor or otherwise, in the course of his or her employment(~~(,~~  
36 ~~or as a separate alternative,~~)). For any person, firm, or corporation  
37 registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW

1 including those performing work for any contractor registered under  
2 chapter 18.27 RCW or licensed under chapter 19.28 RCW, control or  
3 direction is defined as the means by which the result is accomplished  
4 or the manner in which the work is performed. A person is not a worker  
5 if he or she meets the tests set forth in ((~~subsections (1) through (6)~~  
6 ~~of~~)) RCW 51.08.195 (1) through (7): PROVIDED, That a person is not a  
7 worker for the purpose of this title, with respect to his or her  
8 activities attendant to operating a truck which he or she owns, and  
9 which is leased to a common or contract carrier.

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

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

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

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

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

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

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

29 (3) ~~Any person, firm, or corporation registered under chapter 18.27~~  
30 ~~RCW or licensed under chapter 19.28 RCW including those performing work~~  
31 ~~for any contractor registered under chapter 18.27 RCW or licensed under~~  
32 ~~chapter 19.28 RCW is a worker when the contractor supervises or~~  
33 ~~controls the means by which the result is accomplished or the manner in~~  
34 ~~which the work is performed.~~

35 (4)) For the purposes of this title, any person participating as  
36 a driver or back-up driver in commuter ride sharing, as defined in RCW  
37 46.74.010(1), is not a worker while driving a ride-sharing vehicle on  
38 behalf of the owner or lessee of the vehicle.

1       **Sec. 5.** RCW 51.08.195 and 1991 c 246 s 1 are each amended to read  
2 as follows:

3       (1) This section establishes the test for work done by independent  
4 contract that is an exception to the definition of "employment" under  
5 RCW 50.04.100.

6       (2) As ((a separate alternative)) an exception to the definition of  
7 "employer" under RCW 51.08.070 and the definition of "worker" under RCW  
8 51.08.180, services performed by independent contract with an  
9 individual for remuneration shall not constitute employment subject to  
10 this title if it is shown that:

11       ~~((1))~~ (a) The individual has been and will continue to be free  
12 from control or direction over the performance of the service~~((7))~~.  
13 For any person, firm, or corporation registered under chapter 18.27 RCW  
14 or licensed under chapter 19.28 RCW including those performing work for  
15 any contractor registered under chapter 18.27 RCW or licensed under  
16 chapter 19.28 RCW, control or direction is defined as the means by  
17 which the result is accomplished or the manner in which the work is  
18 performed both under the contract of service and in fact; and

19       ~~((2))~~ (b) The service is either outside the usual course of  
20 business for which the service is performed, or the service is  
21 performed outside all of the places of business of the enterprise for  
22 which the service is performed, or the individual is responsible, both  
23 under the contract and in fact, for the costs of the principal place of  
24 business from which the service is performed; and

25       ~~((3))~~ (c) The individual is customarily engaged in an  
26 independently established trade, occupation, profession, or business,  
27 of the same nature as that involved in the contract of service, or the  
28 individual has a principal place of business for the business the  
29 individual is conducting that is eligible for a business deduction for  
30 federal income tax purposes, other than that furnished by the employer  
31 for which the business has contracted to furnish services; and

32       ~~((4))~~ (d) On the effective date of the contract of service, the  
33 individual is responsible for filing at the next applicable filing  
34 period, both under the contract of service and in fact, a schedule of  
35 expenses with the internal revenue service for the type of business the  
36 individual is conducting; and

37       ~~((5))~~ (e) On the effective date of the contract of service, or  
38 within a reasonable period after the effective date of the contract,

1 the individual has (~~established an account~~) an active and valid  
2 certificate of registration with the department of revenue, and an  
3 active and valid account with any other state agencies as required by  
4 the particular case, for the business the individual is conducting for  
5 the payment of all state taxes normally paid by employers and  
6 businesses and has registered for and received a unified business  
7 identifier number from the state of Washington; and

8 ((+6)) (f) On the effective date of the contract of service, the  
9 individual is maintaining a separate set of books or records that  
10 reflect all items of income and expenses of the business which the  
11 individual is conducting; and

12 (g) On the effective date of the contract of service, any person,  
13 firm, or corporation engaging in work that requires registration under  
14 chapter 18.27 RCW or licensing under chapter 19.28 RCW has a valid  
15 contractor registration or electrical contractor license.

16 NEW SECTION. Sec. 6. If any part of this act is found to be in  
17 conflict with federal requirements which are a prescribed condition to  
18 the allocation of federal funds to the state or the eligibility of  
19 employers in this state for federal unemployment tax credits, the  
20 conflicting part of this act is hereby declared to be inoperative  
21 solely to the extent of the conflict, and such finding or determination  
22 may not affect the operation of the remainder of this act. The rules  
23 under this act shall meet federal requirements which are a necessary  
24 condition to the receipt of federal funds by the state or the granting  
25 of federal unemployment tax credits to employers in this state.

26 NEW SECTION. Sec. 7. If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. Sec. 8. RCW 50.04.145 (Employment--Services  
31 performed for contractor, when excluded) and 1983 1st ex.s. c 23 s 25  
32 & 1982 1st ex.s. c 18 s 13 are each repealed.

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