Alaska Employment Security Act
Alaska Statutes, Chapter 20 of Title 23

Section 23.20.525(a) - In this chapter, unless the context otherwise requires, "employment" means

(8) service performed by an individual whether or not the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the Department that:

(A) the individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact:

(B) the service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

Section 23.20.526(a)-In this chapter, unless the context otherwise requires, "employment" does not include. . .

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performed the service for some portion of the day on each of some 24 days during the quarter or during the preceding calendar quarter.

NOTE: *These statutes have been reproduced for your convenience and for reference purposes only.*

If you have any questions please contact

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Do you have contract labor?

ALASKA DEPARTMENT OF LABOR
& WORKFORCE DEVELOPMENT

Do You Have Contract Labor?

Contract labor is generally a term used by employers to describe a worker who is considered to be "independent," i.e., not an employee. Alaska statutes require a close scrutiny of the relationship between the employer and the contract laborer to determine if the worker is an employee for unemployment insurance purposes.

Printed on the back is Alaska Statutes, Section 23.20.525(a) (8) (ABC) which states the conditions that must be met in order for a worker to be excluded from coverage. As an employer, it is in your best interest to understand the provisions. Failure to report a contract laborer who does not meet all the conditions stated may result in additional taxes, interest and penalties to the employer.

A number of appeals and court decisions have interpreted these conditions and may aid you in determining if contract labor should be reported. The following synopsis is not all-inclusive and for the sake of brevity, references to specific appeal decisions have been eliminated.

The following three conditions must be met to qualify as an independent contractor:

1. Lack of Direction and Control....

- Control is exercised when workers are totally dependent upon the employer economically. The employer exercises the necessary control of the employee through monetary means. For example, a worker who performs services primarily for one company would be economically dependent upon that company.

- If an employer and not the worker bears responsibility for the finished product or legal responsibility for the performance of the service; therefore, the worker who made the product or performed the service is an employee for unemployment insurance tax purposes.

- In contract labor, the entity contracting to have the work done is concerned only with the finished product. In an employer-employee relationship, concern is with the way the work is done.

- An independent contractor has freedom of action. This freedom of action allows independent contractors to choose their own hours, days of work, materials, acquire their own customers, hire their own assistants, and set their own fees for services performed.

2) Not in the Usual Course of Business...

- The product or service which the employer organized to deliver constitutes the usual course of business. Work performed in the usual course of business is employment.

- The premises where work is done is the employer's place of business. For example, a construction job site is the usual place of business for contractors. The point of sales are considered the usual place of business for salespeople.

3) Independent Trade or Business:

- A sign of an independent business is not the possession of a business license, but the showing that the business of the worker could exist independent of the particular employer.

- An independent contractor customarily does work for others, advertises, provides their own tools, equipment and supplies, submits proposals or bids on projects for which they set their own fees, and is liable for the performance of the work.

- Written contracts with employees that state they are independent contractors responsible for their own taxes are null and void. Such contracts are not sufficient to alter the real status between the employer and the worker.

In addition to the three conditions stated above, Alaska Statutes, Section 23.20.526(a) (3) covers conditions under which a worker who is performing service outside of the usual course of business must be covered for unemployment insurance purposes:

- If remuneration paid is $50 or more in a calendar quarter and
- The service performed is done by a worker who is regularly employed to do this work.

An individual is considered to be regularly employed if they work for some portion of the day for 24 days within a calendar quarter.