

SECOND REGULAR SESSION

# SENATE BILL NO. 1066

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR O'LAUGHLIN.

Read 1st time February 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5652S.01I

## AN ACT

To repeal sections 285.500, 287.020, and 288.034, RSMo, and to enact in lieu thereof three new sections relating to employee classification.

*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Section A. Sections 285.500, 287.020, and 288.034, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 285.500,  
3 287.020, and 288.034, to read as follows:

285.500. For the purposes of sections 285.500 to 285.515 the following  
2 terms mean:

3 (1) "Employee", any individual who performs services for an employer that  
4 would indicate an employer-employee relationship [in satisfaction of the factors  
5 in IRS Rev. Rule 87-41, 1987-1 C.B.296]. **The divisions, commissions, and  
6 boards within the department of labor and industrial relations shall  
7 defer to the guidance issued by the Internal Revenue Service when  
8 determining whether a person or entity is an employee or independent  
9 contractor;**

10 (2) "Employer", any individual, organization, partnership, political  
11 subdivision, corporation, or other legal entity which has or had in the entity's  
12 employ five or more individuals performing public works as defined in section  
13 290.210;

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

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

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

287.020. 1. **(1)** The word "employee" as used in this chapter shall be  
2 construed to mean every person in the service of any employer, as defined in this  
3 chapter, under any contract of hire, express or implied, oral or written, or under  
4 any appointment or election, including executive officers of corporations. Except  
5 as otherwise provided in section 287.200, any reference to any employee who has  
6 been injured shall, when the employee is dead, also include his or her  
7 dependents, and other persons to whom compensation may be payable. The word  
8 "employee" shall also include all minors who work for an employer, whether or  
9 not such minors are employed in violation of law, and all such minors are hereby  
10 made of full age for all purposes under, in connection with, or arising out of this  
11 chapter. The word "employee" shall not include an individual who is the owner,  
12 as defined in section 301.010, and operator of a motor vehicle which is leased or  
13 contracted with a driver to a for-hire motor carrier operating within a commercial  
14 zone as defined in section 390.020 or 390.041, or operating under a certificate  
15 issued by the Missouri department of transportation or by the United States  
16 Department of Transportation, or any of its subagencies. The word "employee"  
17 also shall not include any person performing services for board, lodging, aid, or  
18 sustenance received from any religious, charitable, or relief organization.

19 **(2) The division shall refer to section 285.500 in determining**  
20 **whether an individual or entity is an employee or independent**  
21 **contractor.**

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

27 3. (1) In this chapter the term "injury" is hereby defined to be an injury  
28 which has arisen out of and in the course of employment. An injury by accident  
29 is compensable only if the accident was the prevailing factor in causing both the  
30 resulting medical condition and disability. "The prevailing factor" is defined to  
31 be the primary factor, in relation to any other factor, causing both the resulting  
32 medical condition and disability.

33 (2) An injury shall be deemed to arise out of and in the course of the  
34 employment only if:

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

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

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

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

46 (5) The terms "injury" and "personal injuries" shall mean violence to the  
47 physical structure of the body and to the personal property which is used to make  
48 up the physical structure of the body, such as artificial dentures, artificial limbs,  
49 glass eyes, eyeglasses, and other prostheses which are placed in or on the body  
50 to replace the physical structure and such disease or infection as naturally results  
51 therefrom. These terms shall in no case except as specifically provided in this  
52 chapter be construed to include occupational disease in any form, nor shall they  
53 be construed to include any contagious or infectious disease contracted during the  
54 course of the employment, nor shall they include death due to natural causes  
55 occurring while the worker is at work.

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

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

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

71 7. As used in this chapter and all acts amendatory thereof, the term  
72 "commission" shall hereafter be construed as meaning and referring exclusively

73 to the labor and industrial relations commission of Missouri, and the term  
74 "director" shall hereafter be construed as meaning the director of the department  
75 of commerce and insurance of the state of Missouri or such agency of government  
76 as shall exercise the powers and duties now conferred and imposed upon the  
77 department of commerce and insurance of the state of Missouri.

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

81 9. For the purposes of this chapter, the term "minor" means a person who  
82 has not attained the age of eighteen years; except that, for the purpose of  
83 computing the compensation provided for in this chapter, the provisions of section  
84 287.250 shall control.

85 10. In applying the provisions of this chapter, it is the intent of the  
86 legislature to reject and abrogate earlier case law interpretations on the meaning  
87 of or definition of "accident", "occupational disease", "arising out of", and "in the  
88 course of the employment" to include, but not be limited to, holdings in: Bennett  
89 v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002);  
90 Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA,  
91 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or  
92 following those cases.

93 11. For the purposes of this chapter, "occupational diseases due to toxic  
94 exposure" shall only include the following: mesothelioma, asbestosis, berylliosis,  
95 coal worker's pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis,  
96 manganism, acute myelogenous leukemia, and myelodysplastic syndrome.

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

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

9           **(2) The division shall refer to section 285.500 in determining**  
10 **whether employment exists.**

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

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

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

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

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

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

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

34           5. Service performed by an individual for remuneration shall be deemed  
35 to be employment subject to this law unless it is shown to the satisfaction of the  
36 division that such services were performed by an independent contractor. In  
37 determining the existence of the independent contractor relationship, the common  
38 law of agency right to control shall be applied. The common law of agency right  
39 to control test shall include but not be limited to: if the alleged employer retains  
40 the right to control the manner and means by which the results are to be  
41 accomplished, the individual who performs the service is an employee. If only the  
42 results are controlled, the individual performing the service is an independent  
43 contractor.

44           6. The term "employment" shall include service performed for wages as

45 an agent-driver or commission-driver engaged in distributing meat products,  
46 vegetable products, fruit products, bakery products, beverages (other than milk),  
47 or laundry or dry-cleaning services, for his or her principal; or as a traveling or  
48 city salesman, other than as an agent-driver or commission-driver, engaged upon  
49 a full-time basis in the solicitation on behalf of, and the transmission to, his or  
50 her principal (except for sideline sales activities on behalf of some other person)  
51 of orders from wholesalers, retailers, contractors, or operators of hotels,  
52 restaurants, or other similar establishments for merchandise for resale or  
53 supplies for use in their business operations, provided:

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

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

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

62 7. Service performed by an individual in the employ of this state or any  
63 political subdivision thereof or any instrumentality of any one or more of the  
64 foregoing which is wholly owned by this state and one or more other states or  
65 political subdivisions, or any service performed in the employ of any  
66 instrumentality of this state or of any political subdivision thereof, and one or  
67 more other states or political subdivisions, provided that such service is excluded  
68 from employment as defined in the Federal Unemployment Tax Act by Section  
69 3306(c)(7) of that act and is not excluded from employment pursuant to subsection  
70 9 of this section, shall be employment subject to this law.

71 8. Service performed by an individual in the employ of a corporation or  
72 any community chest, fund, or foundation organized and operated exclusively for  
73 religious, charitable, scientific, testing for public safety, literary, or educational  
74 purposes, or for the prevention of cruelty to children or animals, no part of the  
75 net earnings of which inures to the benefit of any private shareholder or  
76 individual, or other organization described in Section 501(c)(3) of the Internal  
77 Revenue Code which is exempt from income tax under Section 501(a) of that code  
78 if the organization had four or more individuals in employment for some portion  
79 of a day in each of twenty different weeks whether or not such weeks were  
80 consecutive within a calendar year regardless of whether they were employed at

81 the same moment of time shall be employment subject to this law.

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

84 (1) In the employ of a church or convention or association of churches, or  
85 an organization which is operated primarily for religious purposes and which is  
86 operated, supervised, controlled, or principally supported by a church or  
87 convention or association of churches; or

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

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

94 (a) As an elected official;

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

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

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

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

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

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

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

115 (7) In the employ of a school, college, or university, if such service is  
116 performed (i) by a student who is enrolled and is regularly attending classes at

117 such school, college, or university, or (ii) by the spouse of such a student, if such  
118 spouse is advised, at the time such spouse commences to perform such service,  
119 that (I) the employment of such spouse to perform such service is provided under  
120 a program to provide financial assistance to such student by such school, college,  
121 or university, and (II) such employment will not be covered by any program of  
122 unemployment insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 (a) For the purposes of this subdivision, the term "agricultural labor"



153 means remunerated service performed:

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

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

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

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

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

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

186           e. On a farm operated for profit if such service is not in the course of the  
187 employer's trade or business. As used in this paragraph, the term "farm" includes  
188 stock, dairy, poultry, fruit, furbearing animals, and truck farms, plantations,

189 ranches, nurseries, ranges, greenhouses or other similar structures, used  
190 primarily for the raising of agricultural or horticultural commodities, and  
191 orchards;

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

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

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

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

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

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

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

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

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

224 (ii) Pays (either on his or her own behalf or on behalf of such other

225 person) the individuals so furnished by him or her for the service in agricultural  
226 labor performed by them; and

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

230 (2) Domestic service in a private home except as provided in subsection  
231 13 of this section;

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

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

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

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

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

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

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

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

260 (b) If the division finds that the foreign government, with respect to whose

261 instrumentality exemption is claimed, grants an equivalent exemption with  
262 respect to similar service performed in the foreign country by employees of the  
263 United States government and of instrumentalities thereof. The certification of  
264 the United States Secretary of State to the United States Secretary of Treasury  
265 shall constitute prima facie evidence of such equivalent exemption;

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

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

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

281 (13) Domestic service performed in the employ of a local college club or of  
282 a local chapter of a college fraternity or sorority, except as provided in subsection  
283 13 of this section;

284 (14) Services performed after March 31, 1982, in programs authorized and  
285 funded by the Comprehensive Employment and Training Act by participants of  
286 such programs, except those programs with respect to which unemployment  
287 insurance coverage is required by the Comprehensive Employment and Training  
288 Act or regulations issued pursuant thereto;

289 (15) Service performed by an individual who is enrolled at a nonprofit or  
290 public educational institution which normally maintains a regular faculty and  
291 curriculum and normally has a regularly organized body of students in  
292 attendance at the place where its educational activities are carried on, as a  
293 student in a full-time program, taken for credit at such institution, which  
294 combines academic instruction with work experience, if such service is an integral  
295 part of such program, and such institution has so certified to the employer;  
296 except, that this subdivision shall not apply to service performed in a program

297 established for or on behalf of an employer or group of employers;

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

306 (17) Services performed as a direct seller who is engaged in the trade or  
307 business of the delivering or distribution of newspapers or shopping news,  
308 including any services directly related to such trade or business, or services  
309 performed as a direct seller who is engaged in the trade or business of selling, or  
310 soliciting the sale of, consumer products in the home or otherwise than in, or  
311 affiliated with, a permanent, fixed retail establishment, if eighty percent or more  
312 of the remuneration, whether or not paid in cash, for the services performed  
313 rather than the number of hours worked is directly related to sales performed  
314 pursuant to a written contract between such direct seller and the person for  
315 whom the services are performed, and such contract provides that the individual  
316 will not be treated as an employee with respect to such services for federal tax  
317 purposes;

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

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

327 14. The term "employment" shall include or exclude the entire service of  
328 an individual for an employing unit during a pay period in which such  
329 individual's services are not all excluded under the foregoing provisions, on the  
330 following basis: if the services performed during one-half or more of any pay  
331 period constitute employment as otherwise defined in this law, all the services  
332 performed during such period shall be deemed to be employment; but if the

333 services performed during more than one-half of any such pay period do not  
334 constitute employment as otherwise defined in this law, then none of the services  
335 for such period shall be deemed to be employment. (As used in this subsection,  
336 the term "pay period" means a period of not more than thirty-one consecutive  
337 days for which a payment of remuneration is ordinarily made to the individual  
338 by the employing unit employing such individual.) This subsection shall not be  
339 applicable with respect to service performed in a pay period where any such  
340 service is excluded pursuant to subdivision (8) of subsection 12 of this section.

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

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

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

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

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

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

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

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

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

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