

IC 22-4-8

Chapter 8. Employment Defined

IC 22-4-8-1

Definition

Sec. 1. (a) "Employment," subject to the other provisions of this section, means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

(b) Services performed by an individual for remuneration shall be deemed to be employment subject to this article irrespective of whether the common-law relationship of master and servant exists, unless and until all the following conditions are shown to the satisfaction of the department:

(1) The individual has been and will continue to be free from control and direction in connection with the performance of such service, both under the individual's contract of service and in fact.

(2) The service is performed outside the usual course of the business for which the service is performed.

(3) The individual:

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

(B) is a sales agent who receives remuneration solely upon a commission basis and who is the master of the individual's own time and effort.

(c) The term also includes the following:

(1) Services performed for remuneration by an officer of a corporation in the officer's official corporate capacity.

(2) Services performed for remuneration for any employing unit by an individual:

(A) as an agent-driver or commission-driver engaged in distributing products, including but not limited to, meat, vegetables, fruit, bakery, beverages, or laundry or dry-cleaning services for the individual's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(d) For purposes of subsection (c)(2), the term "employment" shall include services described in subsection (c)(2)(A) and (c)(2)(B) only if all the following conditions are met:

(1) The contract of service contemplates that substantially all of

the services are to be performed personally by such individual.

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

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

(Formerly: Acts 1947, c.208, s.801; Acts 1971, P.L.355, SEC.13.) As amended by P.L.108-2006, SEC.6.

IC 22-4-8-2

Services included

Sec. 2. The term "employment" shall include:

(a) An individual's entire service performed within or both within and without Indiana if the service is localized in Indiana.

(b) An individual's entire service performed within or both within and without Indiana if the service is not localized in any state, but some of the service is performed in Indiana and:

(1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled is in Indiana;

(2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in Indiana; or

(3) such service is not covered under the unemployment compensation law of any other state or Canada, and the place from which the service is directed or controlled is in Indiana.

(c) Services not covered under subsections (a) and (b) and performed entirely without Indiana, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the United States, shall be deemed to be employment subject to this article if the department approves the election of the individual performing such services and the employing unit for which such services are performed, that the entire services of such individual shall be deemed to be employment subject to this article.

(d) Services covered by an election duly approved by the department, in accordance with an agreement pursuant to IC 22-4-22-1 through IC 22-4-22-5, shall be deemed to be employment during the effective period of such election.

(e) Service shall be deemed to be localized within a state if:

(1) the service is performed entirely within such state; or

(2) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, such as is temporary or transitory in nature or consists of isolated transactions.

(f) Periods of vacation with pay or leave with pay, other than military leave granted or given to an individual by an employer.

(g) Notwithstanding any other provisions of this article, the term employment shall also include all services performed by an officer or member of the crew of an American vessel or American aircraft, on or in connection with such vessel or such aircraft, provided that the operating office, from which the operations of such vessel operating on navigable waters within or the operations of such aircraft within, or the operation of such vessel or aircraft within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(h) Services performed for an employer which is subject to contribution solely by reason of liability for any federal tax against which credit may be taken for contributions paid into a state unemployment compensation fund.

(i) The following:

(1) Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or eligible postsecondary educational institution located in Indiana.

(2) Service performed after December 31, 1977, by an individual in the employ of this state or a political subdivision of the state or any instrumentality of the state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, if the service is excluded from "employment" as defined in Section 3306(c)(7) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7)). However, service performed after December 31, 1977, as the following is excluded:

(A) An elected official.

(B) A member of a legislative body or of the judiciary of a state or political subdivision.

(C) A member of the state national guard or air national guard.

(D) An employee serving on a temporary basis in the case of fire, snow, storm, earthquake, flood, or similar emergency.

(E) An individual in a position which, under the laws of the state, is designated as:

(i) a major nontenured policymaking or advisory position; or

(ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.

(3) Service performed after March 31, 1981, by an individual whose service is part of an unemployment work relief or work training program assisted or financed in whole by any federal agency or an agency of this state or a political subdivision of this state, by an individual receiving such work relief or work training is excluded.

(j) Service performed after December 31, 1971, by an individual

in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:

(1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act (26 U.S.C. 3306(c)(8)).

(2) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(3) For the purposes of subdivisions (1) and (2), the term "employment" does not apply to service performed as follows:

(A) In the employ of:

- (i) a church or convention or association of churches; or
- (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(C) Before January 1, 1978, in the employ of a school which is not an eligible postsecondary educational institution.

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

(E) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(k) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (a), (b), or (e) or the parallel provisions of another state's law), if the following apply:

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

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

(A) an individual who is a resident of this state;

(B) a corporation which is organized under the laws of this

state;

(C) a partnership, limited liability partnership, or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(D) an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company (referred to as an "entity" in this clause), and either:

(i) the entity is organized under the laws of this state; or

(ii) the number of owners, members, or beneficiaries who are residents of this state is greater than the number who are residents of any one (1) other state.

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

(4) An "American employer," for purposes of this subsection, means:

(A) an individual who is a resident of the United States;

(B) a partnership or limited liability partnership, if two-thirds (2/3) or more of the partners are residents of the United States;

(C) a trust, if all of the trustees are residents of the United States; or

(D) a corporation, an association, a joint venture, an estate, a limited liability company, a joint stock company, or an insurance company organized or established under the laws of the United States or of any state.

(l) The term "employment" also includes the following:

(1) Service performed after December 31, 1977, by an individual in agricultural labor (as defined in section 3(c) of this chapter) when the service is performed for an employing unit which:

(A) during any calendar quarter in either the current or preceding calendar year paid cash remuneration of twenty thousand dollars (\$20,000) or more to individuals employed in agricultural labor; or

(B) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same time.

(2) For the purposes of this subsection, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(A) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963,

or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(B) if the individual is not an employee of another person within the meaning of section 1 of this chapter.

(3) For the purposes of subdivision (1), in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subdivision (2):

(A) the other person and not the crew leader shall be treated as the employer of the individual; and

(B) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on the individual's own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person.

(4) For the purposes of this subsection, the term "crew leader" means an individual who:

(A) furnishes individuals to perform service in agricultural labor for any other person;

(B) pays (either on the individual's own behalf or on behalf of the other person) the agricultural laborers furnished by the individual for the service in agricultural labor performed by them; and

(C) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

(m) The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars (\$1,000) or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in the domestic service in any calendar quarter.

(Formerly: Acts 1947, c.208, s.802; Acts 1971, P.L.355, SEC.14.) As amended by Acts 1977, P.L.262, SEC.13; Acts 1978, P.L.122, SEC.1; Acts 1979, P.L.229, SEC.1; Acts 1981, P.L.209, SEC.5; P.L.18-1987, SEC.27; P.L.2-2007, SEC.291; P.L.3-2008, SEC.158; P.L.175-2009, SEC.7.

IC 22-4-8-3

Services not included; determination of status

Sec. 3. "Employment" shall not include the following:

(1) Except as provided in section 2(i) of this chapter, service performed prior to January 1, 1978, in the employ of this state, any other state, any town or city, or political subdivision, or any instrumentality of any of them, other than service performed in

the employ of a municipally owned public utility as defined in this article; or service performed in the employ of the United States of America, or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this article, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation statute, all of the provisions of this article shall be applicable to such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. However, if this state shall not be certified for any year by the Secretary of Labor under Section 3304 of the Internal Revenue Code the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in IC 22-4-32-19 with respect to contribution erroneously paid or wrongfully assessed.

(2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; however, the department is authorized to enter into agreements with the proper agencies under such Act of Congress which agreements shall become effective ten (10) days after publication thereof, in accordance with rules adopted by the department under IC 4-22-2, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this article, acquired rights to unemployment compensation under such Act of Congress, or who have, after having acquired potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this article.

(3) "Agricultural labor" as provided in section 2(l)(1) of this chapter shall include only services performed:

(A) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

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

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act (12 U.S.C. 1141j(g))

as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of:

(i) the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed; or

(ii) a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in item (i), but only if such operators produce more than one-half (1/2) of the commodity with respect to which such service is performed;

except the provisions of items (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(E) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(4) As used in subdivision (3), "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, nurseries, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(5) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in section 2(m) of this chapter.

(6) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

(7) Service performed by an individual in the employ of child or spouse, and service performed by a child under the age of twenty-one (21) in the employ of a parent.

(8) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars (\$50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed to perform

service not in the course of an employing unit's trade or business during a calendar quarter only if:

(A) on each of some of twenty-four (24) days during such quarter such individual performs such service for some portion of the day; or

(B) such individual was regularly employed (as determined under clause (A)) by such employing unit in the performance of such service during the preceding calendar quarter.

(9) Service performed by an individual in any calendar quarter in the employ of any organization exempt from income tax under Section 501 of the Internal Revenue Code (except those services included in sections 2(i) and 2(j) of this chapter if the remuneration for such service is less than fifty dollars (\$50)).

(10) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(11) Service performed in the employ of a school or eligible postsecondary educational institution if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at the school or eligible postsecondary educational institution; or

(B) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that:

(i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by the school or eligible postsecondary educational institution; and

(ii) such employment will not be covered by any program of unemployment insurance.

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

(13) Service performed in the employ of a government foreign to the United States of America, including service as a consular or other officer or employee or a nondiplomatic representative.

(14) Service performed in the employ of an instrumentality wholly owned by a government foreign to that of the United States of America, if the service is of a character similar to that performed in foreign countries by employees of the United States of America or of an instrumentality thereof, and if the

board finds that the Secretary of State of the United States has certified to the Secretary of the Treasury of the United States that the government, foreign to the United States, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in such country by employees of the United States and of instrumentalities thereof.

(15) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four (4) year course in a medical school chartered or approved pursuant to state law.

(16) Service performed by an individual as an insurance producer or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(17) Service performed by an individual:

(A) under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(18) Service performed in the employ of an international organization.

(19) Except as provided in IC 22-4-7-1, services covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law in accordance with an arrangement pursuant to IC 22-4-22-1 through IC 22-4-22-5, during the effective period of such election.

(20) If the service performed during one-half (1/2) or more of any pay period by an individual for an employing unit constitutes employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any pay period by such an individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, "pay

period" means a period of not more than thirty-one (31) consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit. This subsection shall not be applicable with respect to services performed in a pay period by any such individual where any such service is excepted by subdivision (2).

(21) Service performed by an inmate of a custodial or penal institution.

(22) Service performed as a precinct election officer (as defined in IC 3-5-2-40.1).

(Formerly: Acts 1947, c.208, s.803; Acts 1951, c.295, s.4; Acts 1957, c.299, s.13; Acts 1959, c.305, s.1; Acts 1967, c.310, s.11; Acts 1971, P.L.355, SEC.15.) As amended by Acts 1977, P.L.262, SEC.14; P.L.227-1983, SEC.3; P.L.2-1987, SEC.30; P.L.18-1987, SEC.28; P.L.3-1995, SEC.147; P.L.21-1995, SEC.67; P.L.2-1996, SEC.267; P.L.1-2003, SEC.70; P.L.178-2003, SEC.10; P.L.108-2006, SEC.7; P.L.2-2007, SEC.292.

IC 22-4-8-3.5

Services not included; owner-operator of motor vehicle

Sec. 3.5. As used in this article, "employment" does not include an owner-operator that provides a motor vehicle and the services of a driver to a motor carrier under a written contract that is subject to IC 8-2.1-24-22, 45 IAC 16-1-13, or 49 CFR 376.

As added by P.L.98-2005, SEC.2.

IC 22-4-8-4

"Seasonal employment"; "seasonal worker"

Sec. 4. (a) As used in this article, "seasonal employment" means services performed for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

(b) As used in this article, "seasonal worker" means an individual who:

(1) has been employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year for all seasonal periods, as determined by the department;

(2) has been hired for a specific temporary seasonal period as determined by the department; and

(3) has been notified in writing at the time hired, or immediately following the seasonal determination by the department, whichever is later:

(A) that the individual is performing services in seasonal employment for a seasonal employer; and

(B) that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the department.

As added by P.L.228-1983, SEC.2. Amended by P.L.18-1987,

SEC.29.