

Underground Economy in the Construction Industry Joint Task Force
Definition Modification
December 13, 2007

RCW 51.08.180

"Worker" — Exceptions.

(1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as a separate alternative, a person is not a worker if he or she meets the tests set forth in subsections (1) through (67) of RCW [51.08.195](#): PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

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

~~—(a) Contracting to perform work for any contractor registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW;~~

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

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

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

~~—(i) The work of a contractor as defined in RCW [18.27.010](#); or~~

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

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

~~(4) (2) For the purposes of this title, any person participating as a driver or back-up~~

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driver in commuter ride sharing, as defined in RCW [46.74.010\(1\)](#), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle.

[1991 c 246 § 3; 1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § [51.08.180](#). Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

Notes:

Effective date -- Conflict with federal requirements -- 1991 c 246: See notes following RCW [51.08.195](#).

RCW 51.08.195

Employer and worker — ~~Alternative e~~ Exceptions for work done by independent contract with an individual who does not meet the definition of either a worker or an employer.

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

(1) The individual has been and will continue to be free from control or direction over the performance of the service, including the means by which the result is accomplished or the manner in which the work is performed, both under the contract of service and in fact; and

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

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

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

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individual is conducting; and

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

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

(7) On the effective date of the contract of service, any person, firm, or corporation engaging in work that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 must have a valid contractor registration or electrical contractor license.

[1991 c 246 § 1.]

Notes:

Effective date -- 1991 c 246: "This act shall take effect January 1, 1992." [1991 c 246 § 10.]

Conflict with federal requirements -- 1991 c 246: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state."

[1991 c 246 § 9.]

RCW 51.08.070

"Employer" — Exception.

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. ~~Or as a separate alternative, p~~Persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the

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tests set forth in subsections (1) through (67) of RCW [51.08.195](#).

~~—For the purposes of this title, a contractor registered under chapter [18.27](#) RCW or licensed under chapter [19.28](#) RCW is not an employer when:~~

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

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

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

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

~~—(a) The work of a contractor as defined in RCW [18.27.010](#); or~~

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

[1991 c 246 § 2; 1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § [51.08.070](#). Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Notes:

Effective date -- Conflict with federal requirements -- 1991 c 246: See notes following RCW [51.08.195](#).

Effective dates -- Severability -- 1971 ex.s. c 289: See RCW [51.98.060](#) and [51.98.070](#).