

ENROLLED
 HB 423, Engrossed 1

2005 Legislature

1 A bill to be entitled
 2 An act relating to the definition of "employee" for the
 3 purposes of workers' compensation; amending s. 440.02,
 4 F.S.; redefining the term "employee" under the Workers'
 5 Compensation Law to revise an exemption relating to owner-
 6 operators of motor vehicles; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (d) of subsection (15) of section
 11 440.02, Florida Statutes, is amended to read:

12 440.02 Definitions.--When used in this chapter, unless the
 13 context clearly requires otherwise, the following terms shall
 14 have the following meanings:

15 (15)

16 (d) "Employee" does not include:

17 1. An independent contractor who is not engaged in the
 18 construction industry.

19 a. In order to meet the definition of independent
 20 contractor, at least four of the following criteria must be met:

21 (I) The independent contractor maintains a separate
 22 business with his or her own work facility, truck, equipment,
 23 materials, or similar accommodations;

24 (II) The independent contractor holds or has applied for a
 25 federal employer identification number, unless the independent
 26 contractor is a sole proprietor who is not required to obtain a
 27 federal employer identification number under state or federal
 28 regulations;

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29 (III) The independent contractor receives compensation for
30 services rendered or work performed and such compensation is
31 paid to a business rather than to an individual;

32 (IV) The independent contractor holds one or more bank
33 accounts in the name of the business entity for purposes of
34 paying business expenses or other expenses related to services
35 rendered or work performed for compensation;

36 (V) The independent contractor performs work or is able to
37 perform work for any entity in addition to or besides the
38 employer at his or her own election without the necessity of
39 completing an employment application or process; or

40 (VI) The independent contractor receives compensation for
41 work or services rendered on a competitive-bid basis or
42 completion of a task or a set of tasks as defined by a
43 contractual agreement, unless such contractual agreement
44 expressly states that an employment relationship exists.

45 b. If four of the criteria listed in sub-subparagraph a.
46 do not exist, an individual may still be presumed to be an
47 independent contractor and not an employee based on full
48 consideration of the nature of the individual situation with
49 regard to satisfying any of the following conditions:

50 (I) The independent contractor performs or agrees to
51 perform specific services or work for a specific amount of money
52 and controls the means of performing the services or work.

53 (II) The independent contractor incurs the principal
54 expenses related to the service or work that he or she performs
55 or agrees to perform.

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56 (III) The independent contractor is responsible for the
57 satisfactory completion of the work or services that he or she
58 performs or agrees to perform.

59 (IV) The independent contractor receives compensation for
60 work or services performed for a commission or on a per-job
61 basis and not on any other basis.

62 (V) The independent contractor may realize a profit or
63 suffer a loss in connection with performing work or services.

64 (VI) The independent contractor has continuing or
65 recurring business liabilities or obligations.

66 (VII) The success or failure of the independent
67 contractor's business depends on the relationship of business
68 receipts to expenditures.

69 c. Notwithstanding anything to the contrary in this
70 subparagraph, an individual claiming to be an independent
71 contractor has the burden of proving that he or she is an
72 independent contractor for purposes of this chapter.

73 2. A real estate licensee, if that person agrees, in
74 writing, to perform for remuneration solely by way of
75 commission.

76 3. Bands, orchestras, and musical and theatrical
77 performers, including disk jockeys, performing in licensed
78 premises as defined in chapter 562, if a written contract
79 evidencing an independent contractor relationship is entered
80 into before the commencement of such entertainment.

81 4. An owner-operator of a motor vehicle who transports
82 property under a written contract with a motor carrier which
83 evidences a relationship by which the owner-operator assumes the

84 responsibility of an employer for the performance of the
 85 contract, if the owner-operator is required to furnish ~~the~~
 86 ~~necessary~~ motor vehicle equipment as identified in the written
 87 contract and the principal all costs incidental to the
 88 performance of the contract, including, but not limited to, fuel
 89 and, taxes, licenses, repairs, provided a motor carrier's
 90 advance of costs to the owner-operator when a written contract
 91 evidences the owner-operator's obligation to reimburse such
 92 advance shall be treated as the owner-operator furnishing such
 93 cost and hired help, and the owner-operator ~~is paid a commission~~
 94 ~~for transportation service and~~ is not paid by the hour or on
 95 some other time-measured basis.

96 5. A person whose employment is both casual and not in the
 97 course of the trade, business, profession, or occupation of the
 98 employer.

99 6. A volunteer, except a volunteer worker for the state or
 100 a county, municipality, or other governmental entity. A person
 101 who does not receive monetary remuneration for services is
 102 presumed to be a volunteer unless there is substantial evidence
 103 that a valuable consideration was intended by both employer and
 104 employee. For purposes of this chapter, the term "volunteer"
 105 includes, but is not limited to:

106 a. Persons who serve in private nonprofit agencies and who
 107 receive no compensation other than expenses in an amount less
 108 than or equivalent to the standard mileage and per diem expenses
 109 provided to salaried employees in the same agency or, if such
 110 agency does not have salaried employees who receive mileage and
 111 per diem, then such volunteers who receive no compensation other

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112 | than expenses in an amount less than or equivalent to the
 113 | customary mileage and per diem paid to salaried workers in the
 114 | community as determined by the department; and

115 | b. Volunteers participating in federal programs
 116 | established under Pub. L. No. 93-113.

117 | 7. Unless otherwise prohibited by this chapter, any
 118 | officer of a corporation who elects to be exempt from this
 119 | chapter. Such officer is not an employee for any reason under
 120 | this chapter until the notice of revocation of election filed
 121 | pursuant to s. 440.05 is effective.

122 | 8. An officer of a corporation that is engaged in the
 123 | construction industry who elects to be exempt from the
 124 | provisions of this chapter, as otherwise permitted by this
 125 | chapter. Such officer is not an employee for any reason until
 126 | the notice of revocation of election filed pursuant to s. 440.05
 127 | is effective.

128 | 9. An exercise rider who does not work for a single horse
 129 | farm or breeder, and who is compensated for riding on a case-by-
 130 | case basis, provided a written contract is entered into prior to
 131 | the commencement of such activity which evidences that an
 132 | employee/employer relationship does not exist.

133 | 10. A taxicab, limousine, or other passenger vehicle-for-
 134 | hire driver who operates said vehicles pursuant to a written
 135 | agreement with a company which provides any dispatch, marketing,
 136 | insurance, communications, or other services under which the
 137 | driver and any fees or charges paid by the driver to the company
 138 | for such services are not conditioned upon, or expressed as a
 139 | proportion of, fare revenues.

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140 11. A person who performs services as a sports official
141 for an entity sponsoring an interscholastic sports event or for
142 a public entity or private, nonprofit organization that sponsors
143 an amateur sports event. For purposes of this subparagraph, such
144 a person is an independent contractor. For purposes of this
145 subparagraph, the term "sports official" means any person who is
146 a neutral participant in a sports event, including, but not
147 limited to, umpires, referees, judges, linespersons,
148 scorekeepers, or timekeepers. This subparagraph does not apply
149 to any person employed by a district school board who serves as
150 a sports official as required by the employing school board or
151 who serves as a sports official as part of his or her
152 responsibilities during normal school hours.

153 12. Medicaid-enrolled clients under chapter 393 who are
154 excluded from the definition of employment under s.
155 443.1216(4)(d) and served by Adult Day Training Services under
156 the Home and Community-Based Medicaid Waiver program in a
157 sheltered workshop setting licensed by the United States
158 Department of Labor for the purpose of training and earning less
159 than the federal hourly minimum wage.

160 Section 2. This act shall take effect July 1, 2005.