**Section 320.130 Independent Contractor Exemption**

a) As used in this Part, the term “employee” shall not include any individual:

1) who has been and will continue to be free from control and direction over the performance of the individual’s work, both under the contract of service with the employer and in fact; and

2) who performs work that is either outside the usual course of business or is performed outside all the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

3) who is an independently established trade, occupation, profession or business.

b) “Control” means the existence of general control or right to general control, even though the details of the work are left to an individual’s judgment.

c) “An independently established trade, occupation, profession or business” means the individual performing the services has a proprietary interest in such business, to the extent that the individual operates the business without hindrance from any other person and as the enterprise’s owner, may sell or otherwise transfer the business.

d) All three conditions in subsection (a) must be satisfied for the independent contractor exemption to apply.

e) An individual may be an employee without being entirely dependent upon the relationship with a specified employer for the individual's livelihood. An individual engaged in other occupations may be an employee of a specified employer even though the individual only worked intermittently or part time.

f) In determining whether the exemption applies, the Department shall consider the actual, rather than the alleged, relationship between a respondent and complainant. Designations and terminology used by the parties, as well as the individual's status for tax purposes, are not controlling.