

Article - Labor and Employment

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§3–903.

(a) An employer may not fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) An employer has failed to properly classify an individual when an employer–employee relationship exists as determined under subsection (c) of this section but the employer has not classified the individual as an employee.

(c) (1) Except as provided in § 3–903.1 of this subtitle, for purposes of enforcement of this subtitle only, work performed by an individual for remuneration paid by an employer shall be presumed to create an employer–employee relationship, unless:

(i) the individual is an exempt person; or

(ii) an employer demonstrates that:

1. the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

2. the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

3. the work is:

A. outside of the usual course of business of the person for whom the work is performed; or

B. performed outside of any place of business of the person for whom the work is performed.

(2) Work is outside of the usual course of business of the person for whom it is performed under paragraph (1) of this subsection if:

(i) the individual performs the work off the employer’s premises;

(ii) the individual performs work that is not integrated into the employer’s operation; or

(iii) the work performed is unrelated to the employer’s business.

(3) By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an

employer–employee relationship between the two contracting entities.

(d) The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

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