

CHAPTER 468

(House Bill 1453)

AN ACT concerning

Unemployment Insurance – Exemption from Covered Employment – Home Workers

FOR the purpose of providing that work performed by certain home workers is not covered employment for the purposes of unemployment insurance; providing that certain contributions and benefit charges collected are not subject to refund; providing for the application of this Act; and generally relating to unemployment insurance law.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 8–206
Annotated Code of Maryland
(2008 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

8–206.

(a) Work is not covered employment when performed by a licensed barber or licensed cosmetologist who leases a chair or booth from a holder of a barbershop permit, a beauty salon permit, or an owner–manager permit who operates a barbershop or beauty salon, if the Secretary is satisfied that:

(1) the barber or cosmetologist as lessee and the permit holder have entered into a written lease that is in effect;

(2) the lessee pays a stipulated amount for use of the chair or booth and is not required to make any further accounting of income to the permit holder;

(3) the lessee has access to the premises at all hours and may set personal work hours and prices; and

(4) the lease expressly states that the lessee knows:

(i) of the responsibility to pay State and federal income taxes and make contributions to Social Security for self-employment; and

(ii) that the work is not covered employment.

(b) Work that a direct seller performs is not covered employment if the Secretary is satisfied that:

(1) the direct seller is engaged in the trade or business of selling consumer products:

(i) in the home or at any other location outside of a permanent retail establishment; or

(ii) to a buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person in the home or at any other location outside of a permanent retail establishment;

(2) the direct seller and the person for whom the work is performed have entered into a written agreement that is currently in effect;

(3) substantially all of the compensation for the employment is related directly to sales or other output, including the performance of a service, rather than to the number of hours worked; and

(4) the written agreement states that the direct seller will not be treated as an employee for the purpose of State and federal income taxes with respect to the employment performed under the agreement.

(c) Work that an individual performs is not covered employment if the Secretary is satisfied that the individual:

(1) is engaged in the trade or business of delivering or distributing newspapers or shopping news, including any services directly related to the delivery or distribution of newspapers or shopping news; and

(2) meets the requirements for a direct seller under subsection (b)(2), (3), and (4) of this section.

(d) Work that a messenger service driver performs for a person who is engaged in the messenger service business is not covered employment if the Secretary is satisfied that:

(1) the driver and the person who is engaged in the messenger service business have entered into a written agreement that is currently in effect;

- (2) the driver personally provides the vehicle;
- (3) compensation is by commission only;
- (4) the driver may set personal work hours; and
- (5) the written agreement states expressly and prominently that the driver knows:

- (i) of the responsibility to pay estimated Social Security taxes and State and federal income taxes;

- (ii) that the Social Security tax the driver must pay is higher than the Social Security tax the driver would pay otherwise; and

- (iii) that the work is not covered employment.

(e) Work is not covered employment when performed by a taxicab driver who uses a taxicab or taxicab equipment of a taxicab business that is carried on by the holder of a taxicab permit if the Secretary is satisfied that:

- (1) the driver and permit holder have entered into a written agreement that is currently in effect for the use of the taxicab or taxicab equipment;

- (2) the driver pays a stipulated amount for the use of the taxicab or taxicab equipment and is not required to make any further accounting to the permit holder;

- (3) the driver has access to the taxicab or taxicab equipment at all hours and, subject to the Public Utility Companies Article, may set personal work hours and places; and

- (4) the agreement states expressly that the driver knows:

- (i) of the responsibility to pay State and federal income taxes;

and

- (ii) that the work is not covered employment.

(f) (1) (i) This subsection applies to an individual who is an owner operator of:

- 1. a Class F (tractor) vehicle, described in § 13–923 of the Transportation Article; or

2. except as provided in subparagraph (ii) of this paragraph, a Class E (truck) vehicle, as described in § 13–916 of the Transportation Article, including a Class E (truck) vehicle described in § 13–919 of the Transportation Article.

(ii) This subsection does not apply to an individual who is an owner operator of a vehicle registered as a Class T (tow truck) vehicle under § 13–920 of the Transportation Article.

(2) Work is not covered employment when performed by an owner operator if the Secretary is satisfied that:

(i) the owner operator and a motor carrier have entered into a written agreement that is currently in effect for permanent or trip leasing;

(ii) under the agreement:

1. there is no intent to create an employer–employee relationship; and

2. the owner operator is paid rental compensation;

(iii) for federal tax purposes, the owner operator qualifies as an independent contractor; and

(iv) the owner operator:

1. owns the vehicle or holds it under a bona fide lease arrangement;

2. is responsible for the maintenance of the vehicle;

3. bears the principal burden of the operating costs of the vehicle, including fuel, repairs, supplies, vehicle insurance, and personal expenses while the vehicle is on the road;

4. is responsible for supplying the necessary personnel in connection with the operation of the vehicle; and

5. generally determines the details and means of performing the services under the agreement, in conformance with regulatory requirements, operating procedures of the motor carrier, and specifications of the shipper.

(G) WORK IS NOT COVERED EMPLOYMENT WHEN PERFORMED BY A HOME WORKER IF THE SECRETARY IS SATISFIED THAT:

(1) THE WORK IS PERFORMED ACCORDING TO SPECIFICATIONS FURNISHED BY THE PERSON FOR WHOM THE SERVICES ARE PERFORMED;

(2) THE WORK IS PERFORMED ON TEXTILES FURNISHED BY THE PERSON FOR WHOM THE SERVICES ARE PERFORMED; AND

(3) THE TEXTILES MUST BE RETURNED TO THE PERSON FOR WHOM THE SERVICES ARE PERFORMED OR THAT PERSON'S DESIGNEE.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 8-206(g) of the Labor and Employment Article, as enacted by Section 1 of this Act, shall be applied to and interpreted to affect all determinations by the Secretary of Labor, Licensing, and Regulation of: (1) rates of contributions for employing units for all calendar years beginning on or after January 1, 2010; and (2) benefit charges for unemployment insurance claims for benefits based on work performed on or after January 1, 2010. Contributions paid or benefit charges collected prior to January 1, 2010, that would be affected by the enactment of Section 1 of this Act, are not subject to refund.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 7, 2009.