**Section 240.320 Independent Contractor Test**

a) An individual performing services for a contractor is deemed to be an employee unless the individual meets all three conditions in Section 10(b)(1), (2) and (3) of the Act or the sole proprietor or partnership is deemed legitimate by meeting all 12 conditions in Section 10(c) of the Act.

b) In determining whether direction or control exists, the Department will consider the following factors. For purposes of this Section, an "individual" means an individual performing services for a contractor. No one factor is dispositive of the issue of whether an individual is an employee or an independent contractor. The Department will review the totality of circumstances in making a decision on direction and control.

1) Is the individual eligible for a pension, health insurance, bonuses, paid vacation, or sick pay?

2) Does the contractor carry Workers' Compensation insurance and pay Unemployment Insurance taxes on the individual?

3) Does the contractor deduct Social Security taxes from the individual's compensation and report the worker's income to the Internal Revenue Service (IRS)?

4) Does the contractor furnish the individual with transportation, samples, business cards, or an expense account?

5) Does the contractor require the individual to turn down work from other contractors or assign or limit the territory in which the individual performs services?

6) Does the contractor set the price and credit terms for the product or the services being performed by the individual?

7) Does the contractor require attendance at meetings or provide training?

8) Does the contractor have the right to set rules and regulations?

9) Does the contractor require the individual to perform services a specific number of hours per day or per week?

10) Does the contractor issue assignments, schedule work or set quotas with time requirements?

11) Does the contractor require the individual to follow a routine, order or sequence set by the contractor in performing the services?

12) Does the contractor engage the individual with the expectation that the relationship will continue indefinitely, rather than for a specific project or period of time?

c) "Usual course of services" means that the services rendered by the individual are necessary to the contractor's business and not simply incidental to the business. The fact that the services are customarily or routinely provided by an individual is not dispositive of the issue of whether the services are actually necessary to the contractor's business. In addition, if a task is performed by both a contractor's employees as well as its independent contractors, the task is considered to be in the usual course of the contractor's services.

d) "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.

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

f) In determining whether an individual performing services for a contractor is an employee of the contractor, the Department shall consider the actual, rather than the alleged, relationship between the two. Designations and terminology used by the parties, as well as the individual's status for tax purposes, are not controlling.