

WAC 162-16-230 Jurisdiction—Independent contractors. (1) **Purpose of section.** RCW 49.60.180 defines unfair practices in employment. A person who works or seeks work as an independent contractor, rather than as an employee, is not entitled to the protection of RCW 49.60.180. This section outlines the standards that we will use to determine whether a person is an employee as distinguished from an independent contractor for the purpose of entitlement to the protection of RCW 49.60.180.

(2) **Rights of independent contractor.** While an independent contractor does not have the protection of RCW 49.60.180, the contractor is protected by RCW 49.60.030(1). The general civil right defined in RCW 49.60.030(1) is enforceable by private lawsuit in court under RCW 49.60.030(2) but not by actions of the Washington state human rights commission.

(3) **General approach.** We will consider all the relevant facts, particularly those bearing on the following factors. No one factor is determinative, but the most important is the extent to which the purchaser of work controls the manner and means of performance of the work.

(a) **Control of work.** An employment relationship probably exists where the purchaser of work has the right to control and direct the work of the worker, not only as to the result to be achieved, but also as to the details by which the result is achieved.

(b) **Tools and place of work.** Does the purchaser of the work or the worker furnish the equipment used and the place of work? Generally, the purchaser of work furnishes tools and equipment for employees while independent contractors furnish their own. Some employees furnish some of their own tools, however.

(c) **Skill level involved.** The skill required in the particular occupation. Skilled workers are typically less closely supervised than unskilled workers, but they are employees if indicia of employment other than close supervision are present.

(d) **Type of work involved.** The kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision. Some persons, such as lawyers or doctors, may be employees even though they are not closely supervised. The test for such specialists is not whether the lawyer or doctor is closely supervised, but whether he or she is treated the way that employed lawyers or doctors are commonly treated. Lawyers and doctors are typically independent contractors, however, with respect to their clients or patients.

(e) **Duration of work.** The length of time during which the person has worked or the length of time that the job will last. Independent contractors typically are hired for a job of relatively short duration, but there are instances of independent contracts for an indefinite period - for example, contracts for janitorial service.

(f) **Method of payment.** The method of payment, whether by time or by the job. Independent contractors are usually paid by the job but are sometimes paid by time. Employees are usually paid by time but are sometimes paid by the job.

(g) **Ending the work relationship.** Whether the work relationship is terminable by one party or both parties, with or without notice and explanation. An employee is usually free to quit and is usually subject to discharge or layoff without breach of the employment contract. An independent contractor usually has more fixed obligations.

(h) **Leave.** Whether annual leave is afforded. Leave with pay is almost exclusively accorded to employees.

(i) **Integration of the work in the purchaser's operations.** Whether the work is an integral part of the business of the purchaser of it. Usually, employees rather than independent contractors do the regular work of a business.

(j) **Accrual of benefits.** Whether the worker accumulates retirement benefits. Retirement benefits are almost exclusively accorded to employees.

(k) **Taxation.** Whether with respect to the worker the purchaser of work pays taxes levied on employers, such as the Social Security tax, unemployment compensation tax, and worker's compensation tax, or withholds federal income tax. The tax laws do not have the same purposes as the law against discrimination, so employee status for tax purposes is helpful but not controlling.

(l) **Salary or income.** Whether the worker treats income from the work as salary or as business income. See subsection (3)(k) of this section.

(m) **Employer records.** Whether with respect to the worker the purchaser of work keeps and transmits records and reports required of employers, such as those required under the worker's compensation act. Worker's compensation coverage, like tax coverage, is helpful but not conclusive.

(n) **The intention of the parties.** The fact that a contract says that the worker is an independent contractor will be considered in this respect, but it is not conclusive for the purpose of coverage of RCW 49.60.180.

(4) **Burden of persuasion.** The party asserting that the complainant is an independent contractor has the burden of proving that status.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-16-230, filed 7/12/99, effective 8/12/99.]