

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS
PART 2732 EMPLOYMENT
SECTION 2732.225 EXEMPTION FROM THE DEFINITION OF EMPLOYMENT
FOR FREELANCE EDITORIAL OR PHOTOGRAPHIC WORK

Section 2732.225 Exemption From The Definition Of Employment For Freelance Editorial Or Photographic Work

- a) For the purpose of applying Section 225(B) of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 335(B), as amended by P.A. 87-1178, effective September 22, 1992) [820 ILCS 405/225(B), as amended by P.A. 87-1178], the following terms have the meanings set forth below.
- 1) "Freelance" means that an individual has a right to make his services available to the general public on an ongoing basis as distinguished from being required to perform services exclusively for one individual or entity.

Example: Newspaper A needs a photographer to provide pictures of a presidential visit to the State Fair. The newspaper contracts with a Springfield photographer who regularly contracts with Newspaper A and other newspapers for specific assignments. This photographer is providing freelance services to this newspaper.

Example: Newspaper A contacts a former tennis pro turned sports writer to cover the U.S. Open tennis tournament. The assignment is for a three week period. Newspaper A allows the sports writer to take on assignments from other sources provided they do not interfere with his coverage of the Open. This writer is providing freelance services to this newspaper.

- 2) "Editorial" means work pertaining to the literary or artistic activities or contents of a newspaper as distinguished from the newspaper's business and advertising activities.

Example: Professor A is a world authority on economic theory C. Newspaper B hires professor A to write a column which explains why the President must adopt economic theory C as part of his reelection strategy. Professor A is performing editorial work for the newspaper.

Example: Newspaper A wishes to print a story about a local fair. It hires a resident of the local area to write a column about the fair. The writer of this story is performing editorial work for the newspaper.

Example: Newspaper A is considering raising its advertising rates. Therefore, it hires a consultant to examine all local media advertising rates and recommend a course of action. This consultant is not performing editorial services for the newspaper.

- b) The application of Section 225(B) is limited to services performed for a newspaper. Freelance editorial or photographic services performed for a magazine do not fall within this exception.
- c) Section 225(B) of the Act shall apply only to services performed on or after September 22, 1992.

(Source: Added at 17 Ill. Reg. 8809, effective June 2, 1993)

Enabling Statute:

(820 ILCS 405/225) (from Ch. 48, par. 335)

Sec. 225. (A) The term "employment" shall not include services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news.

(B) The term "employment" does not include the performance of freelance editorial or photographic work for a newspaper.

(C) The term "employment" does not include the delivery or distribution of newspapers or shopping news to the ultimate consumer if:

(1) substantially all of the remuneration for the performance of the services is directly related to sales, "per piece" fees, or other output, rather than to the number of hours worked; and

(2) the services are performed under a written contract between the individual and the person or firm for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal tax purposes.

(3) Delivery or distribution to the ultimate consumer does not include:

(i) delivery or distribution for sale or resale, including, but not limited to, distribution to a newsrack or newsbox, salesperson, newsstand or retail establishment;

(ii) distribution for further distribution, regardless of subsequent sale or resale.

(D) Subsection (C) shall not apply in the case of any individual who provides delivery or distribution services for a newspaper pursuant to the terms of a collective bargaining

agreement and shall not be construed to alter or amend the application or interpretation of any existing collective bargaining agreement. Further, subsection (C) shall not be construed as evidence of the existence or non-existence of an employment relationship under any other Sections of this Act or other existing laws.

(E) Subsections (B) and (C) shall not apply to services that are required to be covered as a condition of approval of this Act by the United States Secretary of Labor under Section 3304 (a) (6) (A) of the Federal Unemployment Tax Act.

(Source: P.A. 87-1178.)