

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS
PART 2732 EMPLOYMENT
SECTION 2732.227 EXEMPTION FOR THE DELIVERY OR DISTRIBUTION OF NEWSPAPER
OR SHOPPING NEWS TO THE ULTIMATE CONSUMER

Section 2732.227 Exemption For The Delivery Or Distribution Of Newspaper Or Shopping News To The Ultimate Consumer

- a) For the purpose of applying Section 225(C) of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 335(C), as amended by P.A. 87-1178, effective September 22, 1992) [820 ILCS 405/225(C), as amended by P.A. 87-1178]:
- 1) The "substantially all the remuneration" requirement is satisfied if at least 75 per cent of the total remuneration received by the individual for the calendar quarter from the employing unit claiming the exemption is directly related to sales, "per piece" fees or other output rather than to the number of hours worked. A "base fee" or other payment provided as a reasonable reimbursement for mileage and other expenses will not be included in calculating whether the requirement is met.

Example: An individual's compensation consists of \$.05 for each newspaper that he delivers and a base fee of \$50.00 per week. The individual's weekly mileage expense is approximately \$25.00 and his other expenses total approximately \$10.00. The base fee is a reasonable reimbursement for mileage and other expenses. Therefore, since the base fee is not considered, regardless of the number of newspapers delivered, 100 per cent, therefore, "substantially all" of the individual's remuneration is directly related to output.

Example: An individual's compensation consists of \$.05 for each newspaper that he delivers and a flat fee of \$100.00 per week. The individual's weekly mileage expense is approximately \$20.00 and his other expenses total approximately \$7.00. The fee is not a reasonable reimbursement for mileage and other expenses. The difference between the fee and the actual expenses is included in determining

whether the "substantially all the remuneration" requirement is met. The individual's output based remuneration would have to be at least 75% of the individual's total pay for the exemption to apply.

- 2) The "written contract" requirement is not met unless the contract specifically states that the individual will not be treated as an employee for Federal tax purposes. It will not be sufficient for the contract to merely state that the individual will not be treated as an employee. Any services provided prior to the date of the execution of the required written contract shall not be exempt under Section 225(C) of the Act; whether these services constituted employment under the Act shall be determined under Section 212 of the Act.
- 3) Delivery or distribution to the "ultimate consumer" does not include the delivery or distribution for sale or resale, including but not limited to, distribution to a newsrack or newsbox, salesperson, newsstand or retail establishment. Delivery or distribution to the "ultimate consumer" does not include the distribution for further distribution regardless of subsequent sale or resale.

Example: Delivery of a single newspaper to a restaurant owner who allows his customers to read the paper is delivery to the ultimate consumer.

Example: Delivery of several copies of a newspaper to a restaurant which provides a complimentary morning newspaper for its customers is not delivery to the ultimate consumer.

- b) Section 225(C) of the Act shall apply only to services performed on or after September 22, 1992.
- c) Section 225(C) of the Act shall apply to a "delivery agent" who delivers the newspaper or shopping news to the ultimate consumer through one or more agents or carriers.

Example: Newspaper A contracts with an individual to deliver its newspapers in a specified area. This individual hires several adult motor route carriers to actually deliver the newspaper. Section 225(C) applies to both the individual and the adult motor route carriers because they are delivering newspapers to the ultimate consumer.

- d) For Section 225(C) of the Act to apply, the majority (more than 50%) of the individual's deliveries of the newspaper or shopping news must be to the ultimate consumer. The majority of deliveries is determined by the number of establishments where deliveries are made, not by the number of newspapers or shopping news delivered to the establishment.

Example: An individual has a large newspaper distribution route. On this route, 40% of his deliveries are to homes or apartments. The remaining 60% are delivered to stores, restaurants, newsstands and other retail establishments for retail sale. Section 225(C) does not apply to this individual.

Example: An individual delivers newspapers to twenty single family homes and to one drugstore. Each home receives one newspaper while fifty newspapers are delivered to the drugstore for resale. Because the number of establishments not the number of newspapers determines the majority of deliveries, the individual makes the majority of his deliveries to the ultimate consumer.

(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.)