

# MARYLAND EMPLOYMENT TEST

(Extracted from Employers' Quick Reference Guide,  
Issued by the Division of Unemployment Insurance, July 2007)

## DEFINITION OF "EMPLOYMENT"

Employment is defined as any service performed for remuneration payment) whether full-time or part-time. This also includes salaries paid to corporate officers who are employees of the corporation including close and subchapter S corporations).

One of the most common employment exclusions is an "independent contractor." The criteria for independent contractor status are:

1. The individual who performs the work is free from control and direction over its performance both in fact and under the contract; and
2. The individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and
3. The work is: (a) outside of the usual course of business of the person for whom the work is performed, or (b) performed outside of any place of business of the person for whom the work is performed.

When independent contractor status is in question, employers must document that all three of the criteria above are satisfied. An independent contractor should have the appropriate licenses, file business tax returns, and may have his/her own federal identification number and UI account number. The Code of Maryland Regulations (COMAR) provides additional guidance for making the proper determination regarding workers. The landmark Maryland Court of Appeals decision, DLLR v. Fox also provides insight into the analysis of the classification of independent contractor. Each of these resources can be found at the Unemployment Insurance web site <http://www.dllr.state.md.us/employment/uitaxpub.htm>.

The following specific exemptions from covered employment are provided under Labor and Employment Article 8 when certain criteria are met:

- Barbers and Beauticians
- Taxicab Drivers
- Owner Operated Tractor Drivers In Certain E & F Classifications
- Maritime Employment
- Election Workers
- Church Employees
- Clergy
- Certain Governmental Employees
- Railroad Employment
- Newspaper Delivery
- Insurance Sales
- Real Estate Sales
- Messenger Service
- Direct Sellers
- Foreign Employment
- Other State Unemployment Insurance Programs
- Work-Relief and Work-Training
- Family Members
- Hospital Patients
- Student Nurses or Interns
- Yacht salespersons who work for a licensed trader on solely a commission basis
- Effective October 1, 1996, services of Aliens who are students, scholars trainees, teachers, etc., who enter the U.S. solely to pursue a full course of study at certain vocational and other non-academic institution.
- Casual Labor

Casual Labor is defined as work performed that is not in the course of the employer's trade or business and which is occasional, incidental or irregular. Do not confuse "casual labor" with temporary or part-time employment, which is taxable.

However, if during a calendar quarter the cash remuneration paid for casual labor is \$50 or more and the casual labor is performed by an individual who is regularly employed by the employer on some portion of 24 days during the calendar quarter or the preceding calendar quarter, the service is covered employment, and remuneration is taxable under the law.

If there are any questions regarding the categories listed, call the Employer Status Unit at (410) 767-2414 or toll free at 1-800-492-5524.

*Reference: [www.dllr.state.md.us](http://www.dllr.state.md.us)*