

|-&gt;

Title 22@ Social Security

|-&gt;

Division 1@ Employment Development Department

|-&gt;

Subdivision 1@ Director of Employment Development

|-&gt;

Division 1@ Unemployment and Disability Compensation

|-&gt;

Part 1@ Unemployment Compensation

|-&gt;

Chapter 3@ SCOPE OR COVERAGE

**621(c)-1 Special Classes of Employees: Agent-Driver,**

Article 1.5@ EMPLOYEE

|-&gt;

**Commission-Driver; Traveling or City Salesman; Home**

Home Worker

## Worker

### (a)

Occupational Groups. Under subdivision (c) of Section 621 of the code, individuals are employees if they perform services for remuneration under certain prescribed circumstances in the following occupational groups: (1) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for his or her principal. (2) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. (3) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

### (1)

As an agent-driver or commission-driver engaged in distributing meat products,

vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for his or her principal.

**(2)**

As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

**(3)**

As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

**(b)**

General. In order for an individual to be an employee pursuant to subdivision (c) of Section 621 of the code, the individual must perform services in an occupation falling within one of the three occupational groups enumerated in subdivision (a) of this section. If the individual does not perform services in one of the designated occupational groups, he or she is not an employee under this section. An individual who is not an employee under this section may nevertheless be an employee pursuant to other subdivisions of Section 621 of the code. The language used to designate the respective occupational groups relates to fields of endeavor in which particular designations are not necessarily in universal use with respect to the same service. The designations are addressed to the actual services without regard to any technical or colloquial labels which may be attached to such services. Thus, a determination whether services fall within one of the

designated occupational groups depends upon the facts of the particular situation.

The factual situations set forth below are illustrative of some of the individuals falling within each of the three occupational groups enumerated in subdivision (a) of this section. The illustrative factual situations are as follows: (1) Agent-driver or commission-driver. This occupational group includes agent-drivers or commission-drivers who are engaged in distributing meat or meat products, vegetables or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for their principals. An agent-driver or commission-driver includes an individual who operates his or her own truck or the truck of a person for whom he or she performs services, serves customers designated by such person as well as those solicited on his or her own, and whose compensation is a commission on his or her sales or the difference between the price he or she charges his or her customers and the price he or she pays to such person for the product or service. (2) Traveling or city salesman. (A) This occupational group includes a city or traveling salesman who is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person or persons) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. An agent-driver or commission-driver is not within this occupational group. City or traveling salesmen who sell to retailers or to the others specified, operate off the premises of their principals, and are generally compensated on a commission basis, are within this occupational group. Such salesmen are generally not controlled as to the details of their services or the means by which they cover their territories, but in the ordinary case they are expected to call on

regular customers with a fair degree of regularity. (B) In order for a city or traveling salesman to be included within this occupational group, his or her entire or principal business activity must be devoted to the solicitation of orders for one principal. Thus, the multiple-line salesman generally is not within this occupational group. However, if the salesman solicits orders primarily for one principal, he or she is not excluded from this occupational group solely because of sideline sales activities on behalf of one or more other persons. In such a case, the salesman is within this occupational group only with respect to the services performed for the person for whom he or she primarily solicits orders and not with respect to the services performed for such other persons. The following examples illustrate the application of the foregoing provisions:

EXAMPLE 1. Salesman A's principal business activity is the solicitation of orders from retail pharmacies on behalf of the X Wholesale Drug Company. A also occasionally solicits orders for drugs on behalf of the Y and Z companies. A is within this occupational group with respect to his services for the X Company but not with respect to his services for either the Y Company or the Z Company.

EXAMPLE 2. Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R Tool Company and the S Cooking Utensil Company. B regularly solicits orders on behalf of both companies. B is not within this occupational group with respect to the services performed for either the R Company or the S Company.

EXAMPLE 3. Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T Brush Company. C occasionally solicits such orders from retail stores and restaurants. C is not within this occupational group.

(3) Home Worker. This occupational group includes a worker who performs services off the premises of the person for whom the services are performed, in the home of the worker, under the conditions specified by the code.

EXAMPLE 4. A manufacturer of

plumbing products hired workers to pick up parts at the plant, take the parts to the homes of the workers, assemble the parts into such products as pistons, flappers for toilet tanks, and repair kits stapled in envelopes, as specified by the manufacturer. The worker completed the assembly, delivered it to the plant, was paid on a piecework rate, and picked up another parts supply. These workers are within the occupational group of home workers.

**(1)**

Agent-driver or commission-driver. This occupational group includes agent-drivers or commission-drivers who are engaged in distributing meat or meat products, vegetables or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for their principals. An agent-driver or commission-driver includes an individual who operates his or her own truck or the truck of a person for whom he or she performs services, serves customers designated by such person as well as those solicited on his or her own, and whose compensation is a commission on his or her sales or the difference between the price he or she charges his or her customers and the price he or she pays to such person for the product or service.

**(2)**

Traveling or city salesman. (A) This occupational group includes a city or traveling salesman who is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person or persons) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. An agent-driver or commission-driver is not within this occupational group. City or traveling salesmen who sell to retailers or to the others specified, operate off the premises of their principals,

and are generally compensated on a commission basis, are within this occupational group. Such salesmen are generally not controlled as to the details of their services or the means by which they cover their territories, but in the ordinary case they are expected to call on regular customers with a fair degree of regularity. (B) In order for a city or traveling salesman to be included within this occupational group, his or her entire or principal business activity must be devoted to the solicitation of orders for one principal. Thus, the multiple-line salesman generally is not within this occupational group. However, if the salesman solicits orders primarily for one principal, he or she is not excluded from this occupational group solely because of sideline sales activities on behalf of one or more other persons. In such a case, the salesman is within this occupational group only with respect to the services performed for the person for whom he or she primarily solicits orders and not with respect to the services performed for such other persons. The following examples illustrate the application of the foregoing provisions:

EXAMPLE 1. Salesman A's principal business activity is the solicitation of orders from retail pharmacies on behalf of the X Wholesale Drug Company. A also occasionally solicits orders for drugs on behalf of the Y and Z companies. A is within this occupational group with respect to his services for the X Company but not with respect to his services for either the Y Company or the Z Company.

EXAMPLE 2. Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R Tool Company and the S Cooking Utensil Company. B regularly solicits orders on behalf of both companies. B is not within this occupational group with respect to the services performed for either the R Company or the S Company.

EXAMPLE 3. Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T Brush Company. C occasionally solicits such orders from retail stores and restaurants. C is not within this occupational group.

**(A)**

This occupational group includes a city or traveling salesman who is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person or persons) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. An agent-driver or commission-driver is not within this occupational group. City or traveling salesmen who sell to retailers or to the others specified, operate off the premises of their principals, and are generally compensated on a commission basis, are within this occupational group. Such salesmen are generally not controlled as to the details of their services or the means by which they cover their territories, but in the ordinary case they are expected to call on regular customers with a fair degree of regularity.

**(B)**

In order for a city or traveling salesman to be included within this occupational group, his or her entire or principal business activity must be devoted to the solicitation of orders for one principal. Thus, the multiple-line salesman generally is not within this occupational group. However, if the salesman solicits orders primarily for one principal, he or she is not excluded from this occupational group solely because of sideline sales activities on behalf of one or more other persons. In such a case, the salesman is within this occupational group only with respect to the services performed for the person for whom he or she primarily solicits orders and not with respect to the services performed for such other persons. The following examples illustrate the application of the foregoing provisions: EXAMPLE 1. Salesman A's principal business activity is the solicitation of orders from retail pharmacies on behalf of the X Wholesale Drug Company. A also occasionally solicits orders for drugs on behalf of the Y and Z companies. A is within this occupational group with respect to his services for the X Company but not with respect to his services for either the Y Company or the Z Company.

EXAMPLE 2. Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R Tool Company and the S Cooking Utensil Company. B regularly solicits orders on behalf of both companies. B is not within this occupational group with respect to the services performed for either the R Company or the S Company. EXAMPLE 3. Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T Brush Company. C occasionally solicits such orders from retail stores and restaurants. C is not within this occupational group.

**(3)**

Home Worker. This occupational group includes a worker who performs services off the premises of the person for whom the services are performed, in the home of the worker, under the conditions specified by the code. EXAMPLE 4. A manufacturer of plumbing products hired workers to pick up parts at the plant, take the parts to the homes of the workers, assemble the parts into such products as pistons, flappers for toilet tanks, and repair kits stapled in envelopes, as specified by the manufacturer. The worker completed the assembly, delivered it to the plant, was paid on a piecework rate, and picked up another parts supply. These workers are within the occupational group of home workers.

**(c)**

Additional Conditions. (1) The fact that an individual falls within one of the enumerated occupational groups, however, does not make such individual an employee under this section unless all of the following conditions exist: (A) The contract of service contemplates that substantially all the services to which the contract related in the particular designated occupation are to be performed personally by such individual. (B) Such individual has no substantial investment in the facilities used in connection with the performance of such services (other than in facilities for transportation). (C) Such services are part of a continuing



relationship with the person for whom the services are performed and are not in the nature of a single transaction. (2) "Contract of service," as used in this section and subdivision (c) of Section 621 of the code, means an arrangement, formal or informal under which the particular services are performed. The requirement that the contract of service shall contemplate that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by the individual means that it is not contemplated that any material part of the services to which the contract relates in such occupation will be delegated to any other person by the individual who undertakes under the contract to perform such services. (3) "Facilities," as used in this section and subdivision (c) of Section 621 of the code, include equipment and premises available for the work or enterprise as distinguished from education, training, and experience, but do not include such tools, instruments, equipment, or clothing, as are commonly or frequently provided by employees. An investment in an automobile by an individual which is used primarily for his or her own transportation in connection with the performance of services for another person has no significance, since such investment is comparable to outlays for transportation by an individual performing similar services who does not own an automobile. Moreover, the investment in facilities for the transportation of the goods or commodities to which the services relate is to be excluded in determining the investment in a particular case. If an individual has a substantial investment in facilities of the requisite character, he or she is not an employee within the meaning of this section, since a substantial investment of the requisite character standing alone is sufficient to exclude the individual from the employee concept under this paragraph. (4) If the services are not performed as part of a continuing relationship with the person for whom the services are performed, but

are in the nature of a single transaction, the individual performing such services is not an employee of such person within the meaning of this section. The fact that the services are not performed on consecutive workdays does not indicate that the services are not performed as part of a continuing relationship.

**(1)**

The fact that an individual falls within one of the enumerated occupational groups, however, does not make such individual an employee under this section unless all of the following conditions exist: (A) The contract of service contemplates that substantially all the services to which the contract related in the particular designated occupation are to be performed personally by such individual. (B) Such individual has no substantial investment in the facilities used in connection with the performance of such services (other than in facilities for transportation). (C) Such services are part of a continuing relationship with the person for whom the services are performed and are not in the nature of a single transaction.

**(A)**

The contract of service contemplates that substantially all the services to which the contract related in the particular designated occupation are to be performed personally by such individual.

**(B)**

Such individual has no substantial investment in the facilities used in connection with the performance of such services (other than in facilities for transportation).

**(C)**

Such services are part of a continuing relationship with the person for whom the services are performed and are not in the nature of a single transaction.

**(2)**

"Contract of service," as used in this section and subdivision (c) of Section 621 of the

code, means an arrangement, formal or informal under which the particular services are performed. The requirement that the contract of service shall contemplate that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by the individual means that it is not contemplated that any material part of the services to which the contract relates in such occupation will be delegated to any other person by the individual who undertakes under the contract to perform such services.

**(3)**

"Facilities," as used in this section and subdivision (c) of Section 621 of the code, include equipment and premises available for the work or enterprise as distinguished from education, training, and experience, but do not include such tools, instruments, equipment, or clothing, as are commonly or frequently provided by employees. An investment in an automobile by an individual which is used primarily for his or her own transportation in connection with the performance of services for another person has no significance, since such investment is comparable to outlays for transportation by an individual performing similar services who does not own an automobile. Moreover, the investment in facilities for the transportation of the goods or commodities to which the services relate is to be excluded in determining the investment in a particular case. If an individual has a substantial investment in facilities of the requisite character, he or she is not an employee within the meaning of this section, since a substantial investment of the requisite character standing alone is sufficient to exclude the individual from the employee concept under this paragraph.

**(4)**

If the services are not performed as part of a continuing relationship with the person for whom the services are performed, but are in the nature of a single transaction, the individual performing such services is not an employee of such person within the

meaning of this section. The fact that the services are not performed on consecutive workdays does not indicate that the services are not performed as part of a continuing relationship.