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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 2.5@ WITHHOLDING TAX ON WAGES

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Chapter 1@ GENERAL PROVISIONS

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Section 4304-6@ Application to Newspaper Distribution Industry

4304-6 Application to Newspaper Distribution Industry

(a)

While determination of whether a carrier is an employee or an independent contractor in the newspaper distribution industry will be determined generally by the rules set forth in 4304-1 above, specific application of those rules to services in the newspaper distribution industry are set forth in 4304-6. In circumstances where a specific application is not interpreted by 4304-6 that specific application will be determined by the rules set forth in 4304-1 above. No one or more of enumerated factors will necessarily indicate that a particular relationship exists.

(b)

Definitions: (1) A "newspaper" is a newspaper of general circulation as defined in Government Code Section 6000, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own circulation, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise. (2) A "publisher" is the natural or corporate person that manages the newspaper's business operations, including circulation. (3) A "newspaper distributor" is a person or entity that contracts with a publisher to distribute newspapers to the community. (4) A "principal" is, for the purposes of these regulations, a person or entity that engages the services of a carrier to effect the actual delivery of the newspaper to the customer or reader. The principal of a carrier may be either a publisher which effects its own distribution or a newspaper

distributor. (5) A "carrier" is a person who effects physical delivery of the newspaper to the customer or reader. He or she is an agent of a principal who may be either a publisher or a newspaper distributor. He or she may be, depending on guidelines listed below, either an employee or an independent contractor with respect to that principal. (6) A "route" is a geographic sector of the community, or a specified list of customers, to which a carrier effects deliveries of the newspaper.

(1)

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(2)

A "publisher" is the natural or corporate person that manages the newspaper's business operations, including circulation.

(3)

A "newspaper distributor" is a person or entity that contracts with a publisher to distribute newspapers to the community.

(4)

A "principal" is, for the purposes of these regulations, a person or entity that engages the services of a carrier to effect the actual delivery of the newspaper to the customer or reader. The principal of a carrier may be either a publisher which effects its own distribution or a newspaper distributor.

(5)

A "carrier" is a person who effects physical delivery of the newspaper to the customer or reader. He or she is an agent of a principal who may be either a publisher or a newspaper distributor. He or she may be, depending on guidelines listed below, either

an employee or an independent contractor with respect to that principal.

(6)

A "route" is a geographic sector of the community, or a specified list of customers, to which a carrier effects deliveries of the newspaper.

(c)

Basic Guidelines. (1) Written agreements. A written agreement signed by both parties shall be evidence of intent. However, if the terms of the agreement are not complied with in practice, the agreement shall not determine the intent or the relationship of the parties. A written agreement to the extent it provides for negotiation of terms, including fees, expense adjustments and other items of compensation to the carrier, shall tend to indicate the existence of an independent contractor relationship. The outcome of any such negotiations shall not be evidence of the existence of either an employment or an independent contractor relationship. A provision prohibiting the carrier from affixing to, or inserting in, the newspaper any materials unauthorized by the principal or from making use of the principal's subscriber list without the principal's consent shall not be evidence of employment or independence. A provision by which the carrier holds the principal harmless from liability shall be evidence of independence. A provision whereby the carrier agrees to post a bond with the principal at the carrier's expense shall be evidence of independence unless the principal increases the carrier's remuneration to pay the cost of such bond. (2) Compensation. Compensation to the carrier in the form of an hourly rate shall be evidence of an employment relationship.

Compensation to the carrier in the form of a flat fee per route or per copy delivered shall be evidence of an independent contractor relationship. Other bases for compensation, combining factors of distance, difficulty and expense of delivery, shall be evidence of an employment relationship to the extent that such

terms are nonnegotiable and of an independent contractor relationship to the extent that they are negotiable. Bonuses which are paid as an incentive to the maintenance or improvement of customer satisfaction on the carrier's route, such as might be indicated by a slowed rate of cancellations or an increased rate of starts, shall not be evidence of employment or independence. (3) Benefits plans. The fact that a principal provides the opportunity for a carrier to participate in a health, medical, life insurance, or retirement insurance program shall not be evidence of an employment relationship if the carrier is charged for premiums necessary for participation in such program. Any adjustment in remuneration of the carrier to compensate him or her for the payment for participation in such benefits plans shall be evidence of employment. (4) Conditions of service. The fact that a principal and carrier agree that the carrier shall deliver a newspaper to each customer on his or her route in a timely manner and in a readable condition shall not be evidence of an employment relationship as long as other factors indicate the absence of control by the principal of the manner and means of such delivery. Timeliness of delivery may be indicated by agreement for delivery or completion of a route by a certain hour. Readability may be indicated by agreement for protecting the newspaper against damp conditions or by placement on the customer's premises, as the situation may require, in a location readily accessible to the customer and protected from theft, animals or moisture. The fact that carriers are assigned routes by the principal and that such assignments are not negotiated with regard to remuneration shall be evidence of employment. However, if a route is offered to a carrier and the remuneration for servicing the route is negotiable, it shall be evidence of independence. The fact that the carrier is required to maintain a subscriber list and update such list and provide copies to the principal upon request for the benefit of the principal shall not be evidence of either

an employee or independent contractor relationship. Where the principal requires the carrier to deliver billings without agreement on compensation to the subscribers, such requirement shall be evidence of employment; however, where the carrier is given the option of delivering billings for additional remuneration, such evidence shall tend to indicate independence. The fact that the principal bills the subscribers and is responsible for collecting the accounts receivable shall not be evidence of employment or independence. The fact that the principal provides transportation for the carrier's delivery of the newspaper, at less than a fair market cost to the carrier, shall be evidence of employment. (5) Customer complaints.

Customer complaints as to missed delivery, late delivery or delivery in an unreadable condition may be taken by the principal and referred to the carrier without giving rise to the inference of either an employment or an independent contractor relationship. The fact that the principal requires the carrier to respond to or correct such problems shall tend to indicate an employment relationship. The fact that the principal responds to or corrects such problems directly and charges the carrier with a penalty or with the principal's cost of corrective action shall tend to indicate the existence of an independent contractor relationship; the absence of such a charge will be evidence of employment. The fact that the principal gives the carrier the option of either personally correcting the problem or being charged with a penalty or with the principal's cost of correction shall tend to indicate an independent contractor relationship. (6) Termination. When, by terms of an agreement or by practice of the principal, the relationship between the principal and carrier may be unilaterally terminated without 30 days' notice, it will be evidence of employment. A right of termination without such notice for breach of statutory or regulatory requirements, for the protection of the public or for a material breach by the carrier of the terms and conditions of service including, but

not limited to, abandonment or complete failure to deliver a route, or late, incomplete or damaged delivery over a period of time, or other significant interference with customer relationships, shall not be evidence of employment. (7) Substitutes. The fact that the principal provides substitute carriers for the regular carriers shall be evidence of employment. However, if the principal provides a substitute in an emergency situation and charges the carrier for such delivery, it is evidence of independence. The fact that the carrier can obtain his or her own substitute without the principal's approval shall be evidence of independence. If a substitute carrier is paid directly by the principal in non-emergency situations, whether the substitute is chosen by the carrier or principal, it shall be evidence of employment. (8) Recruitment advertising and applications. Terminology in carrier recruitment advertising and carrier application forms will be evidence of independence or employment. (9) Workers' Compensation Insurance. The fact that a principal carries workers' compensation insurance on all carriers, whether in an employment or independent contractor relationship, shall not create an inference of employment or independence.

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Written agreements. A written agreement signed by both parties shall be evidence of intent. However, if the terms of the agreement are not complied with in practice, the agreement shall not determine the intent or the relationship of the parties. A written agreement to the extent it provides for negotiation of terms, including fees, expense adjustments and other items of compensation to the carrier, shall tend to indicate the existence of an independent contractor relationship. The outcome of any such negotiations shall not be evidence of the existence of either an employment or an independent contractor relationship. A provision prohibiting the carrier from affixing to, or inserting in, the newspaper any materials unauthorized by the principal or from

making use of the principal's subscriber list without the principal's consent shall not be evidence of employment or independence. A provision by which the carrier holds the principal harmless from liability shall be evidence of independence. A provision whereby the carrier agrees to post a bond with the principal at the carrier's expense shall be evidence of independence unless the principal increases the carrier's remuneration to pay the cost of such bond.

(2)

Compensation. Compensation to the carrier in the form of an hourly rate shall be evidence of an employment relationship. Compensation to the carrier in the form of a flat fee per route or per copy delivered shall be evidence of an independent contractor relationship. Other bases for compensation, combining factors of distance, difficulty and expense of delivery, shall be evidence of an employment relationship to the extent that such terms are nonnegotiable and of an independent contractor relationship to the extent that they are negotiable. Bonuses which are paid as an incentive to the maintenance or improvement of customer satisfaction on the carrier's route, such as might be indicated by a slowed rate of cancellations or an increased rate of starts, shall not be evidence of employment or independence.

(3)

Benefits plans. The fact that a principal provides the opportunity for a carrier to participate in a health, medical, life insurance, or retirement insurance program shall not be evidence of an employment relationship if the carrier is charged for premiums necessary for participation in such program. Any adjustment in remuneration of the carrier to compensate him or her for the payment for participation in such benefits plans shall be evidence of employment.

(4)

Conditions of service. The fact that a principal and carrier agree that the carrier shall

deliver a newspaper to each customer on his or her route in a timely manner and in a readable condition shall not be evidence of an employment relationship as long as other factors indicate the absence of control by the principal of the manner and means of such delivery. Timeliness of delivery may be indicated by agreement for delivery or completion of a route by a certain hour. Readability may be indicated by agreement for protecting the newspaper against damp conditions or by placement on the customer's premises, as the situation may require, in a location readily accessible to the customer and protected from theft, animals or moisture. The fact that carriers are assigned routes by the principal and that such assignments are not negotiated with regard to remuneration shall be evidence of employment. However, if a route is offered to a carrier and the remuneration for servicing the route is negotiable, it shall be evidence of independence. The fact that the carrier is required to maintain a subscriber list and update such list and provide copies to the principal upon request for the benefit of the principal shall not be evidence of either an employee or independent contractor relationship. Where the principal requires the carrier to deliver billings without agreement on compensation to the subscribers, such requirement shall be evidence of employment; however, where the carrier is given the option of delivering billings for additional remuneration, such evidence shall tend to indicate independence. The fact that the principal bills the subscribers and is responsible for collecting the accounts receivable shall not be evidence of employment or independence. The fact that the principal provides transportation for the carrier's delivery of the newspaper, at less than a fair market cost to the carrier, shall be evidence of employment.

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(6)

Termination. When, by terms of an agreement or by practice of the principal, the relationship between the principal and carrier may be unilaterally terminated without 30 days' notice, it will be evidence of employment. A right of termination without such notice for breach of statutory or regulatory requirements, for the protection of the public or for a material breach by the carrier of the terms and conditions of service including, but not limited to, abandonment or complete failure to deliver a route, or late, incomplete or damaged delivery over a period of time, or other significant interference with customer relationships, shall not be evidence of employment.

(7)

Substitutes. The fact that the principal provides substitute carriers for the regular carriers shall be evidence of employment. However, if the principal provides a substitute in an emergency situation and charges the carrier for such delivery, it is evidence of independence. The fact that the carrier can obtain his or her own substitute without the principal's approval shall be evidence of independence. If a substitute carrier is paid directly by the principal in non-emergency situations, whether the substitute is chosen by the carrier or principal, it shall be evidence of employment.

(8)

Recruitment advertising and applications. Terminology in carrier recruitment advertising and carrier application forms will be evidence of independence or employment.

(9)

Workers' Compensation Insurance. The fact that a principal carries workers' compensation insurance on all carriers, whether in an employment or independent contractor relationship, shall not create an inference of employment or independence.