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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 4304-7@ Specific Application of Rules for Determination of Employment Status to Circumstances in the

Product Demonstrator Industry

## **4304-7 Specific Application of Rules for Determination of Employment Status to Circumstances in the Product Demonstrator Industry**

### **(a)**

The common law rules used to determine whether services are performed as an employee or as an independent contractor are contained in Section 4304-1. That section provides that "the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. If the principal has the right to control the manner and means of accomplishing the desired result, whether or not that right is exercised, an employer-employee relationship exists."

The purpose of this Section is to provide the product demonstrator industry with standards to be used in conjunction with Section 4304-1 whether a product demonstrator is performing services as an employee or independent contractor. The factors contained in this section are indicators of the right to control. Not all applications listed in this section are necessary to make a determination that a particular relationship exists. A determination of whether services are being performed as an employee or independent contractor will depend upon a grouping of factors that are significant in relation to the services being performed.

### **(b)**

A "product demonstrator" is an individual who distributes coupons, demonstrates or gives away samples of products as part of an advertising or sales promotion for

the product.

**(c)**

To determine whether one performs services for another as an employee, the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. If the principal has the right to control the manner and means of accomplishing the desired result, whether or not that right is exercised, an employer-employee relationship exists. Strong evidence of that right to control is the principal's right to discharge at will, without further liability. A "principal" is defined as any principal or their agent, e.g. manufacturer, wholesaler, broker, marketing firm, demonstration company, or retail store (see following tables).

**(d)**

- (l) The following secondary factors may be used to determine whether a product demonstrator is an employee or an independent contractor. These secondary factors are examples of conduct and should be weighed in light of the activity being performed by the individual. When the factors are considered, a determination of whether the individual is an employee will depend on a grouping of factors that are significant in relation to the services being performed (see following tables).