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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 4304-9@ Specific Application of Rules for Determination of Employment Status to Circumstances in the

4304-9 Specific Application of Rules for Determination of Employment Status to Circumstances in the Language Interpreter's Industry

(a)

To determine whether services are performed as an employee or independent contractor refer to the common law rules contained in section 4304-1 of these regulations. Section 4304-1 provides that "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."

Section 4304-1 lists factors which are evidence of the existence or absence of the right of control, to be considered when making an employment determination.

Section 4304-9 provides standards to be used when applying the common law rules specifically to language interpreters and is intended to make clearer those circumstances under which a language interpreter is an independent contractor or employee.

(b)

Definitions: For purposes of this regulation, the following definitions will apply: (1)

A "language interpreter" is an individual who interprets or translates one or more languages. For example, language includes, but is not limited to, non-English or sign language and interpreted or translated by means of verbal or written

communication. (2) A "principal" is any individual or entity for whom or which the

language interpreter performs interpreting or translating services. A principal can be either an agency, client or customer of an agency, or any other individual or entity. (3) An "agency" is any service, agency, individual, partnership, corporation or other entity that contracts with clients or customers to who it provides language interpreters.

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An "agency" is any service, agency, individual, partnership, corporation or other entity that contracts with clients or customers to who it provides language interpreters.

(c)

Determination Factors: To determine whether one performs services for another as an employee, the most important factor is whether or not the principal has the right to control the manner and means of accomplishing a desired result. Each of the following factors shall be used to determine if an employment relationship exists. Not all factors listed in this section (4304-9) 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 the factors that are significant in relationship to the services being performed. (See following factors.) TABLE OF DETERMINATION

FACTORS -- LANGUAGE INTERPRETERS EVIDENCE OF:

FACTOR **EMPLOYEE** **INDEPENDENT CONTRACTOR** **WEIGHT** (1) Policies, Rules or Procedures of Conduct Set by the agency or principal or both, as evidenced by written or verbal task descriptions, dress code, absence/vacation policies, requiring appointment books, etc. Language interpreter performs his or her services independent of any policies, rules or procedures of conduct set by the agency or principal or both. The setting of policies, rules or procedures and instructions by the agency or principal or both is an indication of direction and control over the language interpreter's services and carries great weight. (2) Supervision on the Job The agency or principal or both supervise the language interpreter, such as requiring the language interpreter to personally confirm all appointments with the agency's clients, arrive early for appointments, reviews the work performance as to how the language interpreter conducts himself or herself on the job, etc. Client complaints about language interpreter's services are directed to the agency for resolution. Agency checks with clients to determine whether language interpreter's services were satisfactory. Details of work not supervised by agency or principal. Client and language interpreter resolve client complaints. No reviews of work performance. To the extent that the agency or principal or both exercises control over the services through supervision it is evidence that the agency or principal or both has the right to control the services, and that this right to control the services is complete and authoritative. This right to control (whether or not exercised) carries the greatest weight in making an employer-employee relationship determination. (3) Training Agency or principal or both instructs the language interpreter on details of the job, how to prepare invoices, on the policies, rules or procedures of conduct, etc. Agency or principal or both require the language interpreter to take training (e.g., classes for continuing education, certification,

attending seminars, etc.) The required training is paid for by the agency or principal or both. Training is not required by the agency or principal or both. Language interpreter seeks training (e.g., classes for continuing education, certification, attending seminars, etc.) on his or her own. Language interpreter pays for his or her own training. Training given by the agency or principal or both that includes instructions about how to perform the services, a dress code, client relations, etc., infers that the agency or principal or both has the right to control the services and carries great weight. Where the agency or principal or both require attendance at training or pays for training, it is an indication of direction and control over the language interpreter's services and carries great weight. (4) Meetings Agency or principal or both conducts meetings and language interpreter's attendance is required or expected. The language interpreter's time is paid for. Agency or principal does not hold required meetings. Attendance is not mandatory and nonattendance is viewed without negative consequence. Time at meetings is not paid for or meetings are not held. The act of holding informational meetings, by itself, is not a strong indication of employment. However, if by intent or in fact the purpose of the meeting is to convey policies, rules or procedures or instructions to do the work, it implies that the agency or principal or both want the services performed in a particular method or manner which indicates direction and control over the language interpreter's services, this would carry great weight. The meetings referred to in this factor are not meetings or conferences where the language interpreter is assigned to perform interpreting services.

(5) Reports Agency requires language interpreter to report by telephone upon job completion, cancellations, no-shows, etc. Agency or principal or both gives the language interpreter instructions when cancellations or no-shows occur. Reports are not required. Reporting requirements are an extension of the factor "supervision"

and would be given medium to great weight depending on the purpose and content of the reports (verbal or written). Reports that are used to monitor the language interpreter's performance are considered controls by the agency or principal or both over the manner and means of the work. However, reports, whether verbal or written, of an invoice nature to determine payment to the language interpreter and/or billings to an agency or principal or both would be neutral. (6)Agency or Principal and Language Interpreter ContractAgreement between the agency or principal or both and the language interpreter gives the agency or principal or both the rightAgreement between the agency or principal or both and the language interpreter does not give the agency or principal or Terminology used in a written agreement is not conclusive of the relationship, but is evidence of the relationship intended. to direct and control the manner and means of the services. Agreement contemplates that the language interpreter will perform the services personally.both the right to direct and control the manner and means of the services. The agreement does does not require the services to be performed personally by the language interpreter.Written agreements do not necessarily depict the actual practices of the parties in a relationship. The actual practices of the parties in a relationship are more important than the wording of an agreement in making an employer-employee relationship determination. An agreement in which the agency or principal or both expresses only an interest in the endresult and abandons the right to control the details (manner and means) of the services is evidence of independence. (7)TerminationBoth the agency or principal and the language interpreter have the right to terminate the relationship at will without prior notice and without any further contractual liability (except for services already performed).By agreement or practice, the agency or principal is required to pay for services not performed, if the agency or principal unilaterally terminates the

relationship, other than for cause. By agreement or practice, makes the language interpreter liable for damages if the language interpreter fails to complete the terms of the agreement. The right to terminate conveys an inherent power of the agency or principal over the language interpreter. The right to terminate at will, without cause, is strong evidence of employment. If the services being performed by the language interpreter are on a continuous basis it would give the appearance of the agency or principal having the right to terminate the services at will by not using the language interpreter's services anymore. (8)Engagement in a Distinct BusinessThe language interpreter does not operate his or her own business. Services performed is a direct and essential part of the agency's or principal's business. The language interpreter operates an independent business separate from that of the agency or principal. If the language interpreter has established a separate business, distinct from that of the agency or principal, and the services are performed in the furtherance of that separate business, great weight would be given. The language interpreter has toward independence. The language interpreter does not advertise his or her services to the general public as a separate business. The language interpreter performs services under the agency's or principal's trade name (provides business card of the agency, etc.). The language interpreter performs services for one or a few agency(s) or principal(s) or both. The language interpreter receives payment for services from the agency or principal whether client pays or not. Billings and collections are handled by the agency or principal. The language interpreter does not have an entrepreneurial risk of loss. business telephone directory listing, advertises under own trade name, has a business license where required, files a Federal Form 1040 Schedule C as an independent business, and has an investment in facilities or equipment. The language interpreter provides services to numerous agencies or principals or both.

The language interpreter does not receive payment for services from the agency or principal if the client does not pay. The language interpreter assumes an entrepreneurial risk of loss. (9)Required Skill of the Language InterpreterIn this particular Industry both employees and independent contractors are highly skilled in interpreting/translating one or more languages, whether or not the work requires certification.Level of skill, by itself, generally does not weigh heavily. However, a high level of technical skill will weigh more heavily when combined with other factors such as separate Therefore, in this Industry, this factor is neutral.and distinct business. A low level of technical skills weighs in favor of employment, since as skill level declines, the language interpreter has less room to exercise the discretion necessary for independence. (10)Duration of ServicesThe language interpreter performs services on a continuous basis.The language interpreter provides services on a sporadic, per job basis.This factor, by itself, is not controlling. Independent contractors usually perform work on a job basis for shorter, designated periods of time. Employment is usually of open-ended duration. A long series of short term assignments from a single agency or principal will tend to show continuity and employment. If the language interpreter's services are performed on a continuing basis it would be evidence of employment, especially if the services are a regular part of the agency's or principal's business. The time of performing the service may result in strong evidence of employment if the performance occurs during regular intervals at regular times. (11)Whether the Agency or Principal or the Language Interpreter Supplies the Instrumentalities, Tools, and Place of WorkThe agency or principal provides the language interpreter with office space, desk, chair(s), telephone, support services, forms, supplies, and business cards.The language interpreter pays for his or her own office, equipment, support services, forms, supplies, and business cards.If the language interpreter

has established his or her own office, and pays all the expenses connected with that separate office, there is a strong indication of independence. On the other hand, if the language interpreter generally works out of the agency's or principal's office where all necessities are provided and paid for by the agency or principal, then there is a strong indication of an employment relationship. (12)Custom in Industry and LocationAgencies or principals treat their language interpreters as employees.Language interpreters typically operate their own separately established businesses.This factor, by itself, is not controlling. This is because each determination must stand on its own facts regarding the agency's or principal's right to direct and control. Industry custom merely gives an inference or direction to the determination. (13)Method of PaymentPayment by time period (hour, week, month, etc.) or piece rate. Payments made at regular intervals. Compensation set by the agency or principal. Expenses are reimbursed or benefits furnished or both.No benefits are provided. Language interpreter pays for his or her own expenses. Fee for services negotiated per job.This factor, by itself, is not controlling. It is only an indication of the type of relationship. This is because a language interpreter may be paid solely by the job, but the controls are sufficient to create an employer-employee relationship. (14)Belief of PartiesAll parties believe the relationship is one of employment.All parties agree that the relationship is one of independence.This factor, by itself, is not controlling. The belief of parties only infers the relationship intended. (15)Part of Regular Business of Agency or PrincipalThe language interpreter's services are an integral part of the agency's or principal's business activities. The language interpreter's activities are central to delivering the services provided by the business.The language interpreter's services are only supportive of the business activities, purpose and are not an integral part of the agency's or principal's business activities.This factor is given

medium to great weight. The presumption is that if the language interpreter's services are an integral (regular, normal, central) part of the agency's or principal's business, then the agency or principal by business necessity needs to maintain control over the language interpreter's services.