

## Chapter 567, Unemployment Compensation.

Proposal to amend Section 31-222, to accommodate the independent relationships between construction general contractors and subcontractors.

Sec. 31-222. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(a) (1) "Employment", subject to the other provisions of this subsection, means:

(A) Any service, including service in interstate commerce, and service outside the United States, performed under any express or implied contract of hire creating the relationship of employer and employee;

(B) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, including service in interstate commerce, by any of the following:

(i) Any officer of a corporation;

(ii) any individual who, under either common law rules applicable in determining the employer-employee relationship or under the provisions of this subsection, has the status of an employee. Service performed by an individual shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the administrator that (I) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed;

(iii) any individual other than an individual who is an employee under clause (i) or (ii) who performs services for remuneration for any person (I) 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 principal; (II) 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 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; provided, for purposes of subparagraph (B) (iii), the term "employment" shall include services described in clause (I) and (II) above performed after December 31, 1971, if 1. the contract of service contemplates that substantially all of the services are to be performed personally by such individual; 2. the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and 3. the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed;

(C) (i) Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities or in the employ of this state and one or more other states or their instrumentalities for a hospital or institution of higher education located in this state, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under subparagraph (E) of this subdivision;

(ii) Service performed after December 31, 1977, in the employ of this state or any political subdivision or any instrumentality thereof which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof, and one or more other states or political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subparagraph (E) of this subdivision; and

(iii) Service performed after December 20, 2000, in the employ of an Indian tribe, as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), provided such service is

excluded from "employment", as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act, and is not excluded from "employment" under subparagraph (E) of this subdivision;

(D) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met: (i) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and (ii) the organization had one or more employees in employment for some portion of a day in each of thirteen different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, or during any thirteen weeks in any calendar year after 1970, regardless of whether they were employed at the same moment of time;

(E) For the purposes of subparagraphs (C) and (D) the term "employment" does not apply to service performed (i) in the employ of (I) a church or convention or association of churches, or (II) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to January 1, 1978, in the employ of a school which is not an institution of higher education; after December 31, 1977, in the employ of a governmental entity referred to in subparagraph (C) of this subdivision if such service is performed by an individual in the exercise of duties (I) as an elected official; (II) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision, or of an Indian tribe; (III) as a member of the state national guard or air national guard; (IV) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (V) in a position which, under or pursuant to the laws of this state or tribal law, is designated as (i) a major nontenured policy-making or advisory position, or (ii) a policy-making position the performance of the duties of which ordinarily does not require more than eight hours per week; or (iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their

impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (iv) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; or (v) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

(F) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971, except in Canada after December 31, 1971, and the Virgin Islands after December 31, 1971, and until the day after the day on which the Secretary of Labor accepts an unemployment insurance law submitted by the Virgin Islands, in the employ of an American employer, other than service which is deemed "employment" under the provisions of subdivisions (2) or (3) of this subsection or the parallel provisions of another state's law, if: (i) The employer's principal place of business in the United States is located in this state; or (ii) the employer has no place of business in the United States, but (I) the employer is an individual who is a resident of this state; or (II) the employer is a corporation which is organized under the laws of this state; or (III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or (iii) none of the criteria of clauses (i) and (ii) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state. (iv) An "American employer", for purposes of this subparagraph, means a person who is (I) an individual who is a resident of the United States; or (II) a partnership, if two-thirds or more of the partners are residents of the United States; or (III) a trust, if all of the trustees are residents of the United States; or (IV) a corporation organized under the laws of the United States or of any state; (v) for purposes of this paragraph "United States" includes the states, the District of Columbia and Puerto Rico and the Virgin Islands on the day after the day on which the Secretary of Labor accepts an unemployment insurance law submitted by the Virgin Islands;

(G) Notwithstanding subdivision (2) of this subsection, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state;

(H) Service performed after December 31, 1977, by an individual in agricultural labor as defined in subparagraph (1)(H)(vi) of this subsection when: (i) Such service is performed for a person who (I) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subdivision (ii) of this subparagraph, or (II) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subdivision (ii) of this subparagraph, ten or more individuals, regardless of whether they were employed at the same moment of time; (ii) such service is not performed in agricultural labor if performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act; (iii) for the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (I) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (II) if such individual is not an employee of such other person within the meaning of subparagraph (B) of subsection (a)(1); (iv) for the purposes of this subparagraph (H), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (iii), (I) such other person and not the crew leader shall be treated as the employer of such individual; and (II) such other person shall be treated as

having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader either on his own behalf or on behalf of such other person for the service in agricultural labor performed for such other person; (v) for the purposes of this subparagraph (H), the term "crew leader" means an individual who (I) furnishes individuals to perform services in agricultural labor for any other person, (II) pays either on his own behalf or on behalf of such other person the individuals so furnished by him for the service in agricultural labor performed by them, and (III) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; (vi) for purposes of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1978, which was agricultural labor prior to such date, and remunerated service performed after December 31, 1977:

(I) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife; (II) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (III) in connection with the production or harvesting of a commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, S. 3; 12 USC 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; (IV) (1) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed; (2) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subclause (1), but only if such operators produced more than one-half of the commodity with respect to which such service is performed; (3) the provisions of subclauses (1) and (2) shall not be deemed

to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or (V) on a farm operated for profit if such service is not in the course of the employer's trade or business. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(I) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter;

(J) After December 31, 1977, the term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who, after December 31, 1977, paid cash remuneration to individuals employed in such domestic service equal to one thousand dollars or more in any calendar quarter in the current or preceding calendar year. For purposes of this subparagraph, "domestic service" includes all service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(2) The term "employment" shall include an individual's entire service performed within, or both within and without, this state, (A) if the service is localized in this state, or (B) if the service is not localized in any state but some of the service is performed in this state, and if (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state, or (ii) neither the base of operations nor the place from which such service is directed or controlled is in any state in which some part of the service is performed but the individual's residence is in this state.

(3) Services not covered under subdivision (2) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, or of the federal government, shall be deemed to be employment subject to this chapter, if the administrator approves the election of the employer for whom such services are performed, that the entire service of the individual performing such services shall be deemed to be employment subject to this chapter.

(4) Services shall be deemed to be localized within a state if (A) the service is performed entirely within such state, or (B) the service is performed both within and without such state but the service performed without such state is incidental to the individual's service within the state; for example, is temporary, or transitory in nature, or consists of isolated transactions.

(5) No provision of this chapter, except section 31-254, shall apply to any of the following types of service or employment, except when voluntarily assumed, as provided in section 31-223:

(A) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of eighteen in the employ of his father or mother;

(B) Service performed in the employ of the United States government, any other state, any town or city of any other state, or any political subdivision or instrumentality of any of them; except that, to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make contributions to an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities; provided, if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code, the contributions required of such instrumentalities with respect to such year shall be refunded by the administrator from the fund in the same manner and within the same period as is provided in sections 31-268, 31-269, 31-270 and 31-271 with respect to contributions erroneously collected;

(C) Service with respect to which unemployment compensation is payable under an unemployment compensation plan established



by an Act of Congress, provided the administrator is authorized to enter into agreements with the proper agencies under such Act of Congress, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter, and provided further, in computing benefits the administrator shall disregard all wages paid by employers who fall within the definition of "employer" in Section 1(a) of the Federal Railroad Unemployment Insurance Act;

(D) Service performed in this state or elsewhere with respect to which contributions are required and paid under an unemployment compensation law of any other state;

(E) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subparagraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or (ii) such individual was so employed by such employer in the performance of such service during the preceding calendar quarter;

(F) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Internal Revenue Code or under Section 521 of said code excluding any organization described in Section 401(a) of said code, if the remuneration for such service is less than fifty dollars;

(G) Service performed in the employ of a school, college, or university if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or

university, and (II) such employment will not be covered by any program of unemployment insurance;

(H) Service performed as a student nurse in the employ of a hospital or a nurses' training school chartered pursuant to state law by an individual who is enrolled and is regularly attending classes in such nurses' training school, and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(I) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(J) Service performed by an individual who is enrolled, at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(K) Service performed by an individual as an insurance agent, other than an industrial life insurance agent, and service performed by an individual as a real estate salesperson, if all such service is performed for remuneration solely by way of commission;

(L) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection (h) of this section;

(M) Service performed by an individual in the employ of any town, city or other political subdivision, provided such service is performed in lieu of payment of any delinquent tax payable to such town, city or other political subdivision;

(N) Service performed by an individual as an outside sales representative of a for-profit travel agency if substantially all of such service is performed outside of any travel agency

premises, and all such service is performed for remuneration solely by way of commission. For purposes of this subparagraph, an "outside sales representative" means an individual whose services to a for-profit travel agency are performed under such travel agency's Airlines Reporting Corporation accreditation, or the International Airlines Travel Agent Network endorsement; and

(O) Service performed by the operator of an escort motor vehicle, for an oversize vehicle, overweight vehicle or a vehicle with a load traveling upon any Connecticut highway pursuant to a permit required by section 14-270, and the regulations adopted pursuant to said section, provided the following conditions are met:

(i) The service is provided by an individual operator who is engaged in the business or trade of providing such escort motor vehicle;

(ii) The operator is, and has been, free from control and direction by any other business or other person in connection with the actual performance of such services;

(iii) The operator owns his or her own vehicle, and statutorily required equipment, and exclusively employs this equipment in providing such services; and

(iv) The operator is treated as an independent contractor for all purposes, including, but not limited to, federal and state taxation, workers' compensation, choice of hours worked and choice to accept referrals from multiple entities without consequence.

(b) (1) "Total wages" means all remuneration for employment and dismissal payments, including the cash value of all remuneration paid in any medium other than cash except the cash value of any remuneration paid for agricultural labor or domestic service in any medium other than cash.

(2) "Taxable wages" means total wages except:

(A) That part of the remuneration (i) in excess of seven thousand one hundred dollars paid by an employer to an individual during any calendar year commencing on or after January 1, 1983, (ii) in excess of nine thousand dollars paid by an employer to an individual during the calendar year commencing on January 1, 1994, (iii) in excess of an amount equal to the taxable wages for the prior year increased by one thousand

dollars so paid during any calendar year commencing on or after January 1, 1995, but prior to January 1, 1999, or (iv) in excess of fifteen thousand dollars for any calendar year commencing on or after January 1, 1999. This subsection shall not apply to wages paid in whole or in part from federal funds after January 1, 1976, to employees of towns, cities and other political and governmental subdivisions and shall not operate to reduce an individual's benefit rights. Remuneration paid to an individual by an employer with respect to employment in another state or states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of remuneration equal to the maximum limitation herein referred to;

(B) Dismissal payments which the employer who is not subject to the Federal Unemployment Tax Act is not legally required to make;

(C) Payments which the employer is not legally required to make to employees on leave of absence for military training;

(D) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under Section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to the employee for domestic service in a private home of the employer or for agricultural labor;

(E) The amount of any payment excluded from "wages", as defined in Section 3306(b) of the Federal Unemployment Tax Act, that is made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability, or (iv) death. Whenever tips or gratuities are paid directly to an employee by a customer of an employer, the amount thereof which is accounted for by the employee to the employer shall be considered wages for the purposes of this chapter;

(F) If an employer has acquired all or substantially all the assets, organization, trade or business of another employer liable for contributions under this chapter and has assumed liability for unpaid contributions, if any, due from such other

employer, remuneration paid by both employers shall be deemed paid by a single employer for the purposes of this chapter;

(G) Payment to an employee by a stock corporation, partnership, association or other business entity in which fifty per cent or more of the proprietary interest is owned by such employee or his son, daughter, spouse, father or mother or any combination of such persons, unless the tax imposed by the Federal Unemployment Tax Act is payable with respect to such payment;

(H) Any remuneration paid by any town, city or other political subdivision to an individual for service performed in lieu of payment of delinquent taxes.

(3) Notwithstanding any other provisions of this subsection, wages shall include all remuneration for services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be included under this chapter.

(c) "Administrator" means the Labor Commissioner.

(d) "Balance in the Unemployment Compensation Fund" shall include the balance in the Unemployment Compensation Benefit Fund and such amount as may be due to the fund from the state and any town, city or political or governmental subdivision or entity, or any nonprofit organization which is subject to this chapter and which has elected reimbursement in lieu of contributions and shall include any amount due to or from the United States.

(e) "Calendar quarters" means the quarter years ending on the last day of March, June, September and December, respectively, or the equivalent thereof as the administrator may by regulation prescribe.

(f) "State" means any state of the United States and shall include the District of Columbia and Puerto Rico and the Virgin Islands on the day after the day on which the Secretary of Labor accepts an unemployment insurance law submitted by the Virgin Islands.

(g) (1) The "one-year payroll" at the end of a calendar quarter means the amount of wages paid by all employers for employment

during such calendar quarter and the three next preceding calendar quarters, including only wages with respect to which contributions have been paid or are payable and including only wages of which the administrator has record on the sixtieth day following the end of such quarter.

(2) The "five-year payroll" at the end of a calendar quarter means the amount of wages paid by all employers for employment during such calendar quarter and the nineteen next preceding calendar quarters, including only wages with respect to which contributions have been paid or are payable and including only wages of which the administrator has record on the sixtieth day following the end of such quarter.

(h) "Hospital" means an institution which has been licensed by the Department of Public Health or state Department of Mental Health and Addiction Services, for the care and treatment of the sick and injured, and treatment of persons suffering from disease or other abnormal physical or mental conditions.

(i) "Institution of higher education" means an educational institution which (1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; (2) is legally authorized in this state to provide a program of education beyond high school; (3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; (4) is a public or other nonprofit institution; (5) notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this chapter.

(j) Repealed by P.A. 88-136, S. 36, 37.