

Chapter DWD 107

EMPLOYMENT RELATIONSHIPS IN THE LOGGING INDUSTRY

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Note: Chapter ILHR 107 as it existed on November 30, 1991 was repealed and a new chapter ILHR 107 was created effective December 1, 1991. Chapter ILHR 107 was renumbered chapter DWD 107 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DWD 107.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91; am. (intro.), r. (1), renum. (2) through (5) to be 100.02 (27), (37), (45) and (59), Register, September, 1995, No. 477, eff. 10-1-95; correction made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.

DWD 107.01 Purpose. The purpose of this chapter is to establish standards for determining whether a piece cutter or skidding operator performs services in an independently established business free from a logging contractor's or forest products manufacturer's direction or control so as not to be deemed an "employee" of a logging contractor or forest products manufacturer under s. 108.02 (12), Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

DWD 107.02 Requirements of law; department policy. In determining whether the logging contractor or forest products manufacturer exercises direction or control over the work of a piece cutter or skidding operator and whether the piece cutter or skidding operator is engaged in an independently established business, the department may not use as evidence any requirements of state or federal law governing the logging industry. The department believes it is unreasonable to consider mandates of law as evidence because they have not been imposed on the relationship between the parties of their own volition.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

DWD 107.03 Effect. If a piece cutter or skidding operator has been found, under ss. DWD 107.04 and 107.05, to be free from the direction and control of a logging contractor or forest products manufacturer and to be engaged in an independently established business, the piece cutter or skidding operator is an independent contractor and not an employee of the logging contractor or forest products manufacturer under s. 108.02 (12) (b), Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

DWD 107.04 Direction and control. (1) The department shall examine the factors enumerated in this section to determine, both under contract and in fact, whether a piece cutter or skidding operator is free from a logging contractor's or forest products manufacturer's direction or control while the piece cutter or skidding operator performs services for the logging contractor or forest products manufacturer. The department shall determine whether:

(a) The piece cutter or skidding operator is responsible for providing and maintaining all of the equipment, supplies and tools necessary to meet the contract obligations;

(b) The piece cutter or skidding operator supplies or is responsible for supplying the necessary personal services to meet the contract obligations and may engage the services of individuals, including other piece cutters and skidding operators, without the knowledge or consent of the logging contractor or forest products manufacturer;

(c) The piece cutter or skidding operator may refuse to contract for work, may refuse to perform work not covered by the contract when requested by the logging contractor or forest products manufacturer or may refuse to extend a contract for services;

(d) The logging contractor or forest products manufacturer may not supervise, either directly or indirectly, the piece cutter or skidding operator in the performance of services; and

(e) The logging contractor or forest products manufacturer may not discipline or reprimand the piece cutter or skidding operator or impose work rules to be obeyed by the piece cutter or skidding operator.

(2) If the department determines that all of the factors under sub. (1) (a) to (e) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be free from the direction and control of the logging contractor or forest products manufacturer in the performance of services under s. 108.02 (12) (b) 1., Stats. If one or more of the factors under sub. (1) (a) to (e) are not present, the department shall consider additional factors of the relationship, both under contract and in fact, including whether:

(a) The piece cutter or skidding operator sets the hours of the day and the days of the week the contract services are to be performed;

(b) The piece cutter or skidding operator does not require training by the logging contractor or forest products manufacturer in order to perform the contract services;

(c) The logging contractor or forest products manufacturer may not discharge the piece cutter or skidding operator except for breach of contract; and

(d) The rate of compensation for services is set by the piece cutter or skidding operator, or is determined through bona fide negotiations with the logging contractor or forest products manufacturer, or the piece cutter and skidding operator are free to reject the rate of compensation offered by the logging contractor or forest products manufacturer.

(3) If the department determines that all of the factors under sub. (2) (a) to (d) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be free from the direction and control of the logging contractor or forest products manufacturer in the performance of services under s. 108.02 (12) (b) 1., Stats. If one or more of the factors under sub. (2) (a) to (d) are not present, the piece cutter or skidding operator may be deemed to be free from the direction and control of the logging contractor or forest products manufacturer under s. 108.02 (12) (b) 1., Stats.

(4) If the piece cutter or skidding operator is found to be under the direction or control of the logging contractor or forest products manufacturer under subs. (1) and (2), the piece cutter or skidding operator shall be deemed to be an employee of the logging contractor or forest products manufacturer under s. 108.02 (12) (b) 1., Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

DWD 107.05 Independently established business; customarily engaged. (1) If the department determines that

a piece cutter or skidding operator is free from a logging contractor's or forest products manufacturer's direction or control in the performance of services under s. DWD 107.04, the department shall examine the following factors to determine whether a piece cutter or skidding operator who performs services for a logging contractor or forest products manufacturer is performing these services in an independently established business in which the piece cutter or skidding operator is customarily engaged. The department shall determine whether:

(a) The piece cutter or skidding operator negotiated a contract with the logging contractor or forest products manufacturer for the right to cut timber or the right to skid logs;

(b) The piece cutter or skidding operator negotiated the compensation to be paid for cutting timber or skidding logs;

(c) The piece cutter or skidding operator has an ownership interest in a business. In determining whether the piece cutter or skidding operator has an ownership interest in a business, the department shall consider whether the piece cutter or skidding operator:

1. May sell or give away the business without restriction from the logging contractor or forest products manufacturer;

2. Has an expectation of profit or bears the risk of loss while performing services for the logging contractor or forest products manufacturer; and

3. Has a monetary investment in the trade, such as tools, equipment and inventory, which are usual and customary in the industry.

(d) The piece cutter or skidding operator is represented to logging contractors and forest products manufacturers as a person who provides timber cutting or log skidding services;

(e) The piece cutter or skidding operator is free to solicit contracts, enter into contracts and perform services under contract for more than one logging contractor or forest products manufacturer at or about the same time; and

(f) The piece cutter or skidding operator determines the rate of pay, is liable for paying the wages, and actually pays the wages of individuals, including other piece cutters and skidding operators, engaged by the piece cutter or skidding operator to meet the contract obligations.

(2) If the department determines that all of the factors under sub. (1) (a) to (f) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (b) 2., Stats. If one or more of the factors under sub. (1) (a) to (f) are not present in the relationship between the piece cutter or skidding operator and logging contractor or forest products manufacturer, the department shall consider additional factors including whether:

(a) The business of the piece cutter or skidding operator could continue when the contractual relationship with the logging contractor or forest products manufacturer ends;

(b) The piece cutter or skidding operator is free to perform services for other logging contractors or forest products manufacturers while performing services for the logging contractor or forest products manufacturer;

(c) The piece cutter or skidding operator bears the principal burden of maintaining personal expenses such as meals, lodging and transportation, while performing services;

(d) The piece cutter or skidding operator has a reputation in the community generally on which to rely for business as a piece cutter or skidding operator; and

(e) The piece cutter or skidding operator may incur liability for damages if there is a breach of contract by the piece cutter or skidding operator.

(3) If the department determines that all of the factors under sub. (2) (a) to (e) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (b) 2., Stats. If one or more of the factors under sub. (2) (a) to (e) are not present, the piece cutter or skidding operator may be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (b) 2., Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.