§ 511. Employment. 1. General definition. "Employment" means (a) any service under any contract of employment for hire, express or implied, written, or oral and

(b) any service by a person for an employer

(1) as an agent-driver or commission-driver engaged in distributing meat, vegetable, fruit, or bakery products; beverages other than milk; or laundry or dry-cleaning services; or

(1-a) as a professional musician or a person otherwise engaged in the performing arts, and performing services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing services in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise; or

(1-b) as an employee in the construction industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-one-c of this chapter; or

(1-c) as an employee in the commercial goods transportation industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-two-b of this chapter; or

(2) as a traveling or city salesman engaged on a full-time basis in soliciting orders for merchandise for resale or supplies for use in the purchaser's business operations if the contract of service contemplates that substantially all of such services are to be performed personally by such person; such person does not have a substantial investment in facilities used in connection with the performance of such services, excepting facilities for transportation; and the services are not in the nature of a single transaction which is not part of a continuing relationship with the employer.

(3) as a professional model, where:

(i) the professional model performs modeling services for; or

(ii) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of his or her privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that the professional model is the employee of another employer covered by this chapter. For purposes of this subparagraph, the term "professional model" means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this subparagraph, the term "modeling services" means the appearance by a professional model in photographic sessions or the engagement of such model in live, filmed or taped modeling performances for remuneration.

2. Work localized in state. The term "employment" includes a person's entire service performed within or both within and without this state if the service is localized in this state. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state but that performed without the state is incidental to the person's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

3. Work within and without the state. The term "employment" includes a person's entire service performed both within and without this state provided it is not localized in any state but some of the service is performed in this state, and

(a) the person's base of operations is in this state; or

(b) if there is no base of operations in any state in which some part of the service is performed, the place from which such service is directed or controlled is in this state; or

(c) if the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, the person's residence is in this state.

The term "employment" shall not include services performed without

this state in any calendar year during which no service was performed within this state if contributions with respect to such services are required under the unemployment compensation law of any other state or of the federal government.

4. Other included work.

The term "employment" shall include

(a) Service, wherever performed within the United States, the Virgin Islands, or Canada, if

(1) contributions are not required with respect to such service under an unemployment compensation law of any other state, the Virgin Islands, or Canada, and

(2) the place from which such service is directed or controlled is in this state;

(b) Service performed within this state not otherwise within the purview of the foregoing provisions of this section if contributions are not required with respect to such service under corresponding provisions of an unemployment compensation law of any other state.

5. Work without the state or in a foreign country. (a) Service performed entirely without the state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, is employment if an election with respect to the person's service has been made and approved pursuant to the provisions of section five hundred sixty-one of this article.

(b) The term "employment" includes service by a citizen of the United States performed for an American employer outside the United States, except Canada or the Virgin Islands, provided contributions are not required with respect to such service under an unemployment insurance law of any other state pursuant to criteria which correspond to those of subdivisions two and three of this section, if

(1) the employer's principal place of business in the United States is in this state, or

(2) the employer has no place of business in the United States but is

(i) an individual person who is a resident of this state, or

(ii) a corporation which is organized under the laws of this state, or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state, or

(3) none of the criteria of subparagraphs (1) and (2) are met but the employer has elected coverage of the service in this state or, the employer having failed to elect such coverage in any state, the individual performing the service has filed a claim for benefits under this article on the basis of such service.

(c) For purposes of this subdivision, "American employer" means

(1) an individual who is a resident of the United States; or

(2) a partnership if two-thirds or more of the partners are residents of the United States; or

(3) a trust if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or any state.

6. Agricultural labor. (a) The term "employment" includes agricultural labor. The term "agricultural labor" includes all service performed:

(1) 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;

(2) 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;

(3) 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, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (i) as an incident to farming operations or, (ii) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not apply 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.

(b) As used in this subdivision, the term "farm" includes stock, dairy, poultry, fur-bearing animal, fruit, and truck farms, plantations, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards.

7. Spouse or child. The term "employment" does not include service for an employer by his spouse or child under the age of twenty-one.

8. Golf caddy. The term "employment" does not include service as a golf caddy.

9. Day student. The term "employment" does not include service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school.

10. Employment under the federal railroad unemployment insurance act. The term "employment" does not include employment subject to the federal railroad unemployment insurance act.

11. Maritime services under reciprocal agreements. The term "employment" includes a person's entire service, if such service is deemed performed in this state by virtue of reciprocal agreements pursuant to the provisions of paragraph (c) of subdivision two of section five hundred thirty-six of this article and does not include any service which by virtue of such agreements is deemed performed in another state.

12. Baby sitter. The term "employment" does not include service as a baby sitter at the home of the employer by a minor.

13. Persons under the age of twenty-one engaged in casual labor. The term "employment" does not include services of a person under the age of twenty-one engaged in casual labor consisting of yard work and household

chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery.

14. The term "employment" does not include service by a child under the age of fourteen years.

15. Students and students' spouses at educational institutions. The term "employment" does not include services rendered for an educational institution by a person who is enrolled and is in regular attendance as a student in such an institution, or the spouse of such student employed by that institution if such spouse is advised at the beginning of such services that the employment is provided under a program of financial assistance to such student and will not be covered under this article. For the purposes of this article, the term "employment" shall include services rendered for a health care facility, including academic medical centers, by fellow, resident and intern physicians.

16. Non-applicability of exclusions. The exclusions described in subdivisions eight, nine, twelve, thirteen and fourteen of this section shall not apply to services performed for a nonprofit organization as defined in section five hundred sixty-three or for a governmental entity as defined in section five hundred sixty-five or for an Indian tribe as defined in section five hundred sixty-six of this article. The exclusions described in subdivision twenty-three of this section shall not apply to commercial goods transportation services performed for a commercial goods transportation contractor within the meaning of article twenty-five-C of this chapter.

17. Certain college students. The term "employment" does not include service performed by an individual, regardless of age, 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 subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Freelance shorthand reporter. The term "employment" does not include the services of a freelance shorthand reporter rendered pursuant to any agreement, contract, or mutual understanding, either written or oral, with another freelance shorthand reporter or a freelance shorthand reporting service. For the purposes of this subdivision, a freelance shorthand reporter is a person who records verbatim any oral statement or series of oral statements made over a definite period of time by a written system of shorthand and whose sole compensation for making such a record is an agreed upon fee per page of record produced. Additional payment of a set dollar charge as a minimum fee or attendance fee shall not affect the above definition of a freelance shorthand reporter. For the purposes of this subdivision, a freelance shorthand reporting service means any business which provides freelance shorthand reporters through subcontracts or by any other means.

19. Qualified real estate agent. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) herein was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers'

compensation;

(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

20. The term "employment" shall not include services performed by a full-time student in the employ of an organized camp:

(a) if such camp:

(1) did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent of its average gross receipts for the other six months in the preceding calendar year; and

(b) if such full-time student performs services in the employ of such camp for less than thirteen calendar weeks in any such year.

20-a. Full-time student. (a) For purposes of subdivision twenty of this section, an individual shall be treated as a full-time student for any period:

(1) during which the individual is enrolled as a full-time student at an educational institution; or

(2) which is between academic years or terms if:

(i) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(ii) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in clause (i) of this subparagraph.

(b) For purposes of this subdivision, the term educational institution shall mean any educational institution of secondary, higher educational, professional or vocational educational training, as those terms are defined in the education law.

20-b. Camp. For purposes of subdivision twenty of this section, the term camp shall mean "children's overnight camp" as that term is defined in subdivision one of section thirteen hundred ninety-two of the public health law, and any "summer day camp" as that term is defined in subdivision two of section thirteen hundred ninety-two of the public health law, and any "traveling summer day camp" as that term is defined in subdivision three of section thirteen hundred ninety-two of the public health law.

21. Qualified insurance agent or broker. The term "employment" shall not include the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is

directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in paragraph (c) of this subdivision was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her

own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

22. Recreational bowling. The term "employment" shall not include recreational bowling, such as bowling in a league where an individual may occasionally win prize money.

23. Newspaper delivery persons. The term "employment" shall not include service performed by any person if:

(a) such person is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business);

(b) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subdivision is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed, and such contract provides that person will not be treated as an employee with respect to such services for federal tax purposes.