

OPINION
64-483

September 21, 1964 (OPINION)

Mr. E. Odin Sjaastad

Commissioner

North Dakota Workmen's Compensation Bureau

RE: Workmen's Compensation - Coverage for Employees - Eligibility of
Insurance Agents

This is in response to your letter in which you ask this office to give an opinion on the question whether or not life insurance agents or insurance agents are considered employees and come under the Workmen's Compensation Laws of this state.

The Workmen's Compensation Act of this state does not enumerate the type of employees that are covered under the Act. The Act requires that every person employed in hazardous employment in this state must be covered by the Workmen's Compensation Act of this state.

"Hazardous employment" is defined in section 65-01-02, subsection 4(a) of the North Dakota Century Code and includes all employment except: "(1) Agricultural or domestic service; or (2) Any employment of a common carrier by steam railroad; or (3) Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles and return over the same route within the state of North Dakota; or (4) All members of the clergy and employees of religious organizations engaged in the operation, maintenance and conduct of the place of worship; * * * *."

"Employment" is defined in subsection 3 to mean: "* * * * Employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments; * * * *."

The term "Employee" is also defined in the Act to mean: "* * * * every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, * * * *."

It thus becomes quite apparent that insurance agents for life insurance companies or other insurance companies are covered by the Act if they are employees of such company. It further appears that they are either employees or independent contractors. The Workmen's Compensation Act as such does not define what constitutes an independent contractor, consequently, the common law definitions would be to some extent applicable. Factors in determining whether or not a person is an independent contractor may be such as who has control or direction over the individual, or over the performance of the service, or who has supervision and control of the work being

performed. (30 Pac. 2d. 491.) Right to discharge is another factor. (293 Pac 2d. 972.) Another factor is whether or not the individual is customarily engaged in an independent established trade, occupation, profession or business. If so, he would be an independent contractor. The control or right of control over detail of work has been considered a factor in determining whether an individual is an employee or contractor. (107 Pac. 2d. 1027.)

There is no hard, fast rule available to determine whether a person is an employee or is an independent contractor for all instances. Each instance or case must be judged on its own particular facts. There is an excellent discussion of the relationship of employer and employee in *Stove Bedding Co. v. Industrial Commission*, 107 Pac 2d. 1027.

Generally speaking, a person who performs services for another is either an independent contractor or an employee. If he is an employee he is required to be covered under the Workmen's Compensation Act, except where the services are merely casual and not in the course of the trade, business, profession or occupation of the employer.

As to salesmen, quite frequently the question whether or not the salesman is restricted to a certain company or noncompetitive companies is somewhat determinative of his status of employment.

In direct response to your inquiry I must state that we are unable to give you any general rule which would be applicable every instance. It is our opinion that the circumstances surrounding the relationship will determine in each instance whether or not the person is an employee or an independent contractor. This also applies to insurance agents. I might add that the Workmen's Compensation Act is remedial legislation designed to protect employees and as such the Act should be liberally construed to afford the employees the protection intended to be afforded by the Workmen's Compensation Act.

HELGI JOHANNESON

Attorney General