

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.
2. "*Employer*" includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters, volunteer emergency rescue technicians, and emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. "*Employer*" includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

"*Employer*" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*". However, if a student participating in a school-to-work program is participating in open enrollment under section 282.18, "*employer*" means the receiving district. "*Employer*" also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*", is paid for services provided under the program, "*employer*" means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.
3. "*Gross earnings*" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.
4. The words "*injury*" or "*personal injury*" shall be construed as follows:
 - a. They shall include death resulting from personal injury.
 - b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.
5. "*Pay period*" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.
6. "*Payroll taxes*" means an amount, determined by tables adopted by the workers' compensation commissioner pursuant to chapter 17A, equal to the sum of the following:
 - a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

7. The words "*personal injury arising out of and in the course of the employment*" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by volunteer emergency rescue technicians or emergency medical care providers as defined in section 147A.1 arise in the course of employment if the injuries are sustained at any time from the time the volunteer emergency rescue technicians or emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. The words "*reserve peace officer*" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

9. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "*Volunteer fire fighter*" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

11. "*Worker*" or "*employee*" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the state patrol; a conservation officer; and a proprietor, limited liability company member, limited liability partner, or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

"*Worker*" or "*employee*" includes an inmate as defined in section 85.59 and a person described in section 85.60.

"*Worker*" or "*employee*" includes an emergency medical care provider as defined in section 147A.1, a volunteer emergency rescue technician as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee and

the employer for whom the volunteer services are provided that workers' compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer. An emergency medical care provider or volunteer emergency rescue technician who is a worker or employee under this paragraph is not a casual employee. "*Volunteer ambulance driver*" means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. "*Emergency medical technician trainee*" means a person enrolled in and training for emergency medical technician certification.

"*Worker*" or "*employee*" includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

- a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and 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 individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

"*Worker*" or "*employee*" includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*". "*Worker*" or "*employee*" also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program.

12. The term "*worker*" or "*employee*" shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker's or employee's dependents as herein defined or the worker's or employee's legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor's or incompetent's guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

13. The following persons shall not be deemed "*workers*" or "*employees*":

- a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.
- b. An independent contractor.
- c. An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator's vehicle if all of the following conditions are substantially present:

- (1) The owner-operator is responsible for the maintenance of the vehicle.

- (2) The owner-operator bears the principal burden of the vehicle's operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator's employees.

(4) The owner-operator's compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors, limited liability company members, limited liability partners, and partners who have not elected to be covered by the workers' compensation law of this state pursuant to section 85.1A.

[S13, § 2477-m16; C24, 27, 31, 35, 39, § **1421**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.61; 82 Acts, ch 1161, § 18, 19, ch 1221, § 2]

83 Acts, ch 36, § 3, 7, 8; 85 Acts, ch 46, §1; 85 Acts, ch 195, §9; 86 Acts, ch 1074, § 3, 4; 86 Acts, ch 1104, § 2, 3; 87 Acts, ch 91, §25; 89 Acts, ch 89, §13; 89 Acts, ch 218, §1; 91 Acts, ch 209, §1; 93 Acts, ch 88, §1; 95 Acts, ch 41, § 35; 96 Acts, ch 1059, § 4, 5; 96 Acts, ch 1079, § 46; 97 Acts, ch 37, § 3, 4; 98 Acts, ch 1060, § 1, 2; 98 Acts, ch 1061, § 11; 98 Acts, ch 1074, § 9; 2001 Acts, ch 87, §5, 6; 2005 Acts, ch 35, §31