Agency Name: Department of Employment and Workforce

Statutory Authority: 41-29-110

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Subject: Employer-Employee Relationship

History: 4316

By Date Action Description Jt. Res. No. Expiration Date

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- 01/14/2014 Received by Lt. Gov & Speaker 5/14/2014

S 01/14/2014 Referred to Committee

H 01/14/2014 Referred to Committee

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provided for in the Regulation

Document No. 4316

**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Section 41-29-110

47-8. Employer-Employee Relationship

**Synopsis:**

The South Carolina Department of Employment and Workforce proposes to amend Regulation 47-8 to include factors that are used to determine whether a claimant is an employee or an independent contractor.

The Notice of Drafting regarding these regulations was published on October 26, 2012 in the *State Register*.

**Instructions:**

Replace Regulation 47-8. Employer-Employee Relationship as printed below.

**Text:**

47-8. Employer-Employee Relationship.

The South Carolina Department of Employment and Workforce is not bound by the rulings of other entities when making its determination about whether an employer-employee relationship exists for the purpose of determining liability under the South Carolina Department of Employment and Workforce Laws. The Department may consider in its determinations rules, regulations, opinions, laws, and interpretations published by the United States Department of Labor, Internal Revenue Service, South Carolina Department of Revenue, South Carolina Wage and Hour Division, and State and Federal Court decisions.

Under South Carolina Annotated Section 41-27-230(1)(b), the common law rules govern the determination of an employer-employee relationship. The common law test focuses on whether the employer has the right to control the worker in the performance of his or her work. The Department will examine these factors in determining whether an employer-employee relationship exists:

a. Whether the employer has the right to control or exercises control over the services performed for the

job;

b. Whether the employer furnishes the equipment;

c. Whether the method of payment indicates an employment relationship, and

d. Whether the employer has the right to terminate the employment relationship.

**Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Rationale:**

The purpose of amending Regulation 47-8 is to clarify the regulation. There was no scientific or technical basis relied upon in the development of this regulation.