**23.03 EMPLOYER LIABILITY – EMPLOYEE – STATUS AS EMPLOYEE**

\_\_\_\_\_\_\_\_\_\_\_\_ claims that during the time relevant to this case, [alleged employee] was an employee of [alleged employer]. [Alleged employer] denies that [alleged employee] was [his][her][its] employee.

To determine if [alleged employee] was an employee of [alleged employer], you must consider several factors. The most important factor is whether [alleged employer] had the right to control how [alleged employee] performed the work, rather than just the right to specify the result of the work. If so, this factor supports the conclusion that [alleged employee] was [alleged employer]’s employee. If not, this factor supports the conclusion that [alleged employee] was not [alleged employer]’s employee.

In addition to the right of control, you must consider other relevant factors. The presence of the following factors supports the conclusion that [alleged employee] was [alleged employer]’s employee. On the other hand, the absence of these factors supports the conclusion that [alleged employee] was not [alleged employer]’s employee:

* [alleged employer] supplied the equipment, tools and place of work;
* [alleged employee] was paid by the hour rather than by the job;
* the work being done by [alleged employee] was part of the regular business of [alleged employer];
* [alleged employee] did not work for anyone other than [alleged employer];
* the kind of work performed by [alleged employee] is usually done under the direction of a supervisor rather than by a specialist working without supervision;
* the kind of work performed by [alleged employee] does not require specialized or professional skill;
* the services performed by [alleged employee] were to be performed over a long period of time;
* [alleged employer] and [alleged employee] believed that they had an employer-employee relationship;
* [alleged employer] operated a business; and
* [alleged employee] was not engaged in a distinct occupation or business.

**Use Note**

This instruction must be given when there is a disputed question of fact about whether an individual was an employee of the defendant, so that the defendant is vicariously liable for the individual’s conduct.

**Comment**

To determine if an employer/employee relationship exists, Alaska law looks to the factors that are identified in Restatement (Second) of Agency § 220. *Anderson v. PPCT Management Systems, Inc.*, 145 P.3d 503, 507-08 (Alaska 2006); *Powell v. Tanner*, 59 P.3d 246 (Alaska 2002). The most important factor is whether the alleged employer had the right to control the manner of performance of the work. *Anderson*, 145 P.3d at 507. *See* California Civil Jury Instruction 3704.