**23.04 EMPLOYER LIABILITY – INDEPENDENT CONTRACTOR – GENERAL RULE**

A [person] [company] that hires an independent contractor to perform [work] [a task] is not legally responsible for harm that is caused by the independent contractor’s negligence.

**Use Note**

This instruction states the general rule that the employer of an independent contractor is not liable for the independent contractor’s negligence. This instruction should be given when 1) the liability of an employer of an independent contractor is at issue (because the employer is a defendant, or fault may be apportioned to an employer who isn’t a party); and 2) there is evidence regarding the negligence of an independent contractor hired by the employer. In a case involving one of the exceptions to the general rule, this instruction may be modified to state the general rule, and refer to the relevant exception.

**Comment**

An independent contractor is any person who does work for another under conditions which are not sufficient to make the person an employee. *Powell v. Tanner*, 59 P.3d 246, 249 (Alaska 2002). “As a general rule, an employer is not responsible for the negligence of an independent contractor.” *Anderson v. PPCT Management Systems, Inc*., 145 P.3d 503 (Alaska 2006).

Alaska cases recognize situations where the employer of an independent contractor may be liable for its own negligence related to employment of an independent contractor. These include the employer’s negligent exercise of retained control over the independent contractor’s activities (*see, e.g., Anderson*, 145 P.3d at 510); the employer’s negligence with respect to an unusual risk associated with the independent contractor’s activities (*see, e.g., Moloso v. State*, 644 P.2d 205, 215 (Alaska 1982)); and the employer’s negligence with respect to directions, orders or plans given to the contractor (*id*. at 216). An employer of an independent contractor may also be vicariously liable for the independent contractor’s negligence in some circumstances. *See Patton v. Spa Lady, Inc*., 772 P.2d 1082 (Alaska 1989) (liability of possessor of land for unsafe condition of a building during or following independent contractor’s work, based on § 422 of the Restatement (Second) of Torts))*. See generally* Restatement (Second) of Torts §§ 416-429 (describing vicarious liability theories).