21 NCAC 50 .0512 EMPLOYEES EXEMPTED FROM LICENSURE

(a) An unlicensed person who is directly and regularly employed in the ordinary course of business by a contractor licensed pursuant to G.S. 87, Article 2 is not required to have a license and shall not be subject to an action for injunctive relief brought by the Board. Factors establishing whether the individual is directly and regularly employed in the ordinary course of business of such contractor include the following:

(1) whether the individual is on the licensed contractor's payroll;

(2) whether taxes are withheld from the payment to the individual and the contractor performs such other acts as are lawfully required of an employer;

(3) whether the licensed contractor exercises control and supervision over the method, manner and details of the individual's work; and

(4) whether the licensed contractor, and not the unlicensed person, is and remains obligated to the property owner or general contractor for the work.

(b) Persons acting as independent contractors, consultants or subcontractors, or paid as such, are not bona fide employees.

(c) Licensed contractors may utilize employees shared with a labor supplier under a written contract which may allocate payroll or tax withholding obligations to the labor supplier while reserving control, supervision and obligation to the owner or general contractor to the licensee of the Board, and provided the licensee upon whose qualifications the license of the employing contractor is based remains a person meeting all four of the indicia of employment set out in Paragraph (a) of this Rule and is not contracted by or acting as a labor supplier.

History Note: *Authority G.S. 87-18; 87-25;*
Eff. August 1, 2000;
Amended Eff. December 31, 2011; May 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015.