result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees. 

(c) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case. 

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like. 

§31.3306(k)–1 Agricultural labor. 

(a) In general. (1) Services performed by an employee for the person employing him which constitute “agricultural labor” as defined in section 3306(k) are excepted from employment by reason of section 3306(c)(1). See §31.3306(c)(1)–1. The term “agricultural labor” as defined in section 3306(k) includes services of the character described in paragraphs (b), (c), (d), and (e) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.
(2) The term “farm” as used in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute “farms”.

(b) Services described in section 3306(k)(1). Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(1) The cultivation of the soil;
(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or
(3) The raising or harvesting of any other agricultural or horticultural commodity.

(c) Services described in section 3306(k)(2). (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, if the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any such farms or its tools or equipment; or
(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in paragraph (c)(1)(i) of this section may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties, do not constitute agricultural labor.

(d) Services described in section 3306(k)(3). Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;
(2) The hatching of poultry;
(3) The raising or harvesting of mushrooms;
(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;
(5) The production or harvesting of maple sap or the processing of maple sap into maple syrup or maple sugar (but not the subsequent blending or other processing of such syrup or sugar with other products); or
(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin provided such processing is carried on by the original producer of such crude gum.

(e) Services described in section 3306(k)(4). (1)(i) Services performed by an employee in the employ of a farmer or a farmers’ cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see paragraph (e)(2) of this section), produced by such farmer or farmer-members of such organization or group of farmers constitute agricultural labor, if such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed “as an incident to ordinary farming operations” within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers’ cooperative organization or group as a prerequisite to the marketing, in its
§ 31.3306(n)–1

Services on American vessel whose business is conducted by general agent of Secretary of Commerce.

(a) Section 3306(n) and this section of the regulations apply with respect only to services performed by an officer or member of the crew of an American vessel (1) which is owned by or bareboat chartered to the United States, and (2) whose business is conducted by a general agent of the Secretary of Commerce. Whether services performed by such an officer or member of a crew under the above conditions constitute employment is determined under section 3306(c) and (n), but without regard to section 3306(c)(6). See §31.3306(c)(6)–1, relating to services performed in the employ of the United States and instrumentalities thereof. If, without regard to section 3306(c)(6), such services constitute employment,