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ATTENTION CONSTRUCTION INDUSTRY: TIME IS RUNNING OUT TO APPLY FOR WORKERS' COMPENSATION EXEMPTIONS

As one last reminder: all construction exemptions will expire on December 31, 2003, for all sole proprietors, partners, corporations and limited liability companies. Starting January 1st, all persons working in the construction industry have 2 options: either (a) be covered by workers' compensation insurance or (b) apply for an exemption as an owner of either a corporation or a limited liability company. Sole proprietors and partners who work in the construction industry will no longer be able to exempt out of workers' compensation after December 31st.

Remember, **this new requirement applies only to the construction industry.** Jobs that are considered to be in the construction industry include:

- painting
- carpentry
- concrete work
- plumbing
- sprinkler installation
- some landscaping businesses
- elevator repair
- electrical contractors
- wallpaper hanging
- cable installation
- debris removal
- heating and AC work

- sign installation

This is just a partial list – we do not have space to list all the jobs that are considered construction. Just because you do not pull permits does not necessarily mean you are not in the construction industry. If you are not sure whether your business is considered to be in the construction industry, you can call the Florida Division of Workers' Compensation at 800-742-2214. If you describe the nature of your work, they can tell you whether this new law applies to you or not. If your business is not in the construction industry, this law does not apply to you, and you can remain a sole proprietor without having to file for a workers' compensation exemption.

If you have a business that is engaged in the construction industry and you want to remain exempt from carrying workers' compensation insurance, you must file for re-issuance of your exemption before January 1st. You must be an owner of either a corporation or a limited liability company ("LLC") to apply for the new exemption. Officers seeking exemptions must show stock ownership of at least 10% of the corporation or 10% ownership of the LLC to be considered for exemption.

If you are currently a sole proprietor and would like to form either a corporation or limited liability company to apply for your new exemption, we can help you with the paperwork. We charge \$200 (\$150 for FUBA members) to form a corporation and \$300 (\$250 for FUBA members) to form a limited liability company. While we cannot advise you on the tax or legal implications of forming either a corporation or limited liability company, we provide you with everything you need to get your

new exemption. If you are interested in changing your business to a corporation or limited liability company, please call us at 800-262-4483.

NEW FLORIDA LAW MAKES IT EASIER TO QUALIFY AS AN INDEPENDENT CONTRACTOR

On October 1, 2003, Florida's new workers' compensation law went into effect. Although sections of the law will certainly be challenged in court, one improvement for Florida employers is an easier-to-meet definition of "independent contractor" under the law. Persons who are independent contractors aren't your employees and thus don't qualify for workers' comp benefits when they're injured.

What the new law says

To begin with, if you're in the construction industry, forget it! That's right. Florida's new workers' comp law provides that the status of "independent contractor" applies only to persons who aren't engaged in the construction industry. (The Legislature felt that construction companies had abused the status.)

To meet the definition of "independent contractor," a contractor must meet at least four of the six criteria stated in the new law. The burden will be on the entity claiming the status to prove that it qualifies under the law. The six criteria are as follows:

- The independent contractor maintains a separate business with his/her own work facility, truck, equipment, materials, or similar accommodations.
- The independent contractor holds or has applied for a federal employer identification number ("FEIN"), unless the independent contractor is a sole proprietor who isn't required to obtain a federal employer identification number under state or federal regulations.
- The independent contractor receives compensation for services rendered or work performed, and the compensation is paid to a business rather than an individual.
- The independent contractor holds one or more bank accounts in the business entity's name for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation.

- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his own election without the necessity of completing an employment application or process.
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless the agreement clearly states that an employment relationship exists.

Further, if an individual doesn't meet four of the six above tests, he/she may still be presumed to be an independent contractor under the new law based on a full consideration of the following seven criteria:

- The individual agrees to work for a specified amount and has control over his/her work;
- The individual incurs the principal expenses related to his/her work;
- He/she's responsible for the completion of the work;
- He/she's paid a commission on a per-job basis only;
- He/she can profit or incur a loss from the work performed;
- He/she has continuing liability and business obligations; **and**
- The success or failure of his/her business depends on the relationship of the business receipts to the expenditures.

The Bottom Line

The test used to determine an independent contractor is different in each employment situation. For example, slightly different tests are used under wage and hour and employment discrimination laws. The test above is the new one that will be used in Florida for workers' comp. Check now to see if people who are doing work for you are employees or independent contractors.

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