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## **LEGISLATURE APPROVES SWEEPING WORKERS' COMPENSATION REFORM BILL**

During the recent Special Session, the Florida Legislature approved Senate Bill 50-A, which makes numerous significant changes to the state's workers' compensation system. Governor Jeb Bush, a strong advocate for reform, is expected to sign the bill into law in the coming weeks. The bill addresses the current crisis in workers' comp and is intended to provide rate relief to small businesses.

This accomplishment would not have been possible without the strong advocacy of the following legislators, and FUBA would like to publicly thank them for their leadership on this issue: Senate President Jim King (R-Jacksonville), House Speaker Johnnie Byrd (R-Plant City), Senator JD Alexander, (R-Winter Haven), Senator Jeff Atwater (R-Palm Beach Gardens), Representative Don Brown (R-DeFuniak Springs), Senator Charlie Clary (R-Destin), Representative Dudley Goodlette (R-Naples), and Representative Dennis Ross (R-Lakeland).

Here is a summary of those provisions in the bill important to small businesses:

- **Construction Exemptions:** Effective January 1, 2004, construction exemptions will be limited to 3 corporate officers who own at least 10% of the corporation's stock. Sole proprietors and partners in the construction industry will no longer be allowed to exempt themselves. The bill also deletes the provisions enacted last year that disallowed exemptions on commercial construction sites valued at over \$250,000. The size of the job you are working on and whether the job is commercial or residential will no longer be relevant.

Under the new law, all persons working in the construction industry will be required have workers' compensation coverage, except for 3 corporate officers meeting the 10% ownership requirement. Further, an exemption certificate will be applicable to the corporate officer named on the exemption and will apply only within the scope of the business or trade listed on the exemption.

To qualify for an exemption, you will now have to show a stock certificate listing the required ownership. The documentation required to apply for an exemption will now be:

- Notarized exemption application form
- Name, federal tax ID number, social security number
- Copies of all certified or registered licenses issued under Chapter 489, Florida Statutes
- Copy of documentation on employment status filed with IRS
- Copy of occupational license in jurisdiction of business (both city and county, if applicable)
- Registration or charter number of corporation
- Copy of stock certificate showing required ownership

In addition, any employer with employees engaged in the construction industry in Florida will be required to obtain a Florida policy, or an endorsement that uses Florida class codes and rates, even if that business' home office is located outside the state. Failure to comply with this provision will be a second-degree felony.

- **Employer Compliance and Fraud:** The bill establishes several measures designed to fight fraud, including:
  - If the Division of Workers' Compensation issues a stop-work order against an employer for not having adequate workers' compensation coverage, the employer will lose his eligibility for an exemption if he or she does not pay the ordered penalties.

- ❑ Subcontractors will now be **required** to provide evidence of a workers' compensation policy to general contractors. Exempt subcontractors will have to provide contractors with a copy of their exemption certificates.
  - ❑ Employers who improperly classify employees as independent contractors will be fined \$5,000 for each employee who is misclassified.
  - ❑ As a condition for apply for a building permit, every employer must show proof and certify to the permit issuer that it has complied with the workers' compensation law by providing a certificate of coverage, a certificate of exemption, or a copy of the employers' authority to self-insure.
  - ❑ Employers are required to provide their insurance carrier with information to accurately determine payroll and correctly assign classification codes. Employers who do not update their information to their insurance carriers within 7 days of any changes will be guilty of a first-degree misdemeanor.
  - ❑ Employers who understate or misrepresent their payroll, employee duties, or other relevant information will be penalized and subject to a stop-work order.
  - **Safety in the Workplace:** The bill requires the Division of Workers' Compensation to publicize the availability of free safety consultation services and safety program resources. All policyholders in the Florida Workers' Compensation Joint Underwriting Association ("JUA") will be required to participate in a safety program.
  - **Attorney Involvement:** Attorney involvement in Florida has become one of the biggest reasons workers' compensation rates are so high. The bill addresses this problem by continuing the current contingency fee schedule for attorney fees, but putting a cap on hourly fees in medical-only cases at \$150 an hour, not to exceed \$1500 per accident.
  - **Horizontal Immunity:** The bill provides employer immunity for all employers on a jobsite, except if another employer's gross negligence is the primary cause of the workplace accident. This means that if one of your workers accidentally injures an employee of another company on a jobsite, that employee cannot recover workers' compensation benefits from your insurance company and also cannot sue you in court for his or her injuries.
  - **Joint Underwriting Association:** The JUA provides workers' compensation insurance to those businesses that cannot get coverage through a private carrier. Unfortunately, the JUA's rates have been extremely expensive for small businesses. Effective July 1, 2003, the bill creates a plan for small employers with fewer than 15 employees and an experience mod of 1.10 or less. The rate for these businesses would be capped at 125% of the premium charged in the private market.
- Except for those dates noted above, these changes to the workers' compensation law will become effective October 1, 2003. If you have any questions about the new workers' compensation law, please call the FUBA offices and ask for Karen or Lance.

## **SMOKING UPDATE**

The Legislature has also passed a bill implementing the new constitutional amendment banning smoking in indoor workplaces. If approved by Governor Bush, the following changes will take place on July 1, 2003:

- Smoking will be prohibited in restaurants.
- Smoking will be allowed in stand-alone bars as long as the bar does not derive more than 10% of its gross revenue from the sale of food. Every 3 years, a stand-alone bar that serves food other than pre-packaged items will have to file a report with the state Department of Business and Professional Regulation attesting to the percentage of food sales. The report must be attested to by a Certified Public Accountant.
- Stand-alone bars will have to post notices at each entrance.
- Penalties for violations range from a warning to a revocation of the right to smoke on the premises.

If you need more information about how this new law will affect your business, please call the FUBA offices and ask for Karen or Lance.