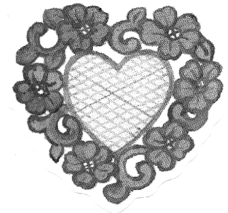




Happy Valentine's Day



Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801

"Tip of the Month"

Workers' Comp and Independent Contractors

Good news for construction companies: on January 4, Governor Lynch signed the partial repeal of that new workers' comp law requiring that corporate and LLC officers get comp for themselves. This law applied only to construction company officers spending time at construction sites, and stirred up an outcry across the State. The repeal requires insurance companies to refund pro-rated premiums paid for coverage purchased earlier to comply with the law.

The repeal is partial because it only applies to private construction. For public works contracts, construction company officers working at the job site will still need to get themselves workers' comp coverage.

The bad news for small construction companies is that it is now harder to characterize workers as independent contractors. As of January 1, 2008 the new law took effect to enhance the presumption that a worker is an employee and not a contractor.

The law was already designed to prevent employers from avoiding workers' comp and other obligations, such as withholding federal income taxes, and unemployment compensation tax. Five factors were listed in the law to distinguish employees from contractors.

Added to the original five factors are now seven more factors for a total of twelve. If the Labor Department accuses an employer of misclassifying a worker as a contractor instead of as an employee, the employer must prove that all twelve factors support the employer. This is a tough burden on the employer.

Employers are also required to post a notice from the Department of Labor called "Know Your Rights." This poster lists the twelve criteria for independent contractor.

Where the penalties for misclassifying a worker can be pretty nasty, it pays for employers to be careful. When in doubt, the employer might prefer putting the worker on the company payroll, despite the expense, over risking the aggravation and cost of a Labor action with potential penalties.

In the alternative, an employer hiring subcontractors should at least become familiar with the twelve criteria. That way the employer can take appropriate steps to document compliance with the law to support classification of the worker as a contractor.

If you have questions about the independent contractor law, or how it might affect your business operations, give us a call at 668-1971 or contact us by e-mail at [mailbox @ biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.
Phillip E. Decker, Esq.

0208

(603) 668-1971

Fax (603) 622-1445

e-mail: mailbox@biz-patlaw.com

Web site: www.biz-patlaw.com