

Employers' requirement to carry Workers' Compensation Insurance

The North Carolina Workers' Compensation Act requires that all businesses which employ three or more employees, including those operating as corporations, sole proprietorships, limited liability companies and partnerships, obtain workers' compensation insurance or qualify as self-insured employers for purposes of paying workers' compensation benefits to their employees. The only exceptions to this requirement are (a) employees of certain railroads; (b) casual employees, i.e., individuals who do not perform "work pertaining to the regular course of defendant's business"; (c) domestic servants directly employed by the household; (d) farm laborers when fewer than 10 full-time, non-seasonal farm laborers are regularly employed by the same employer; (e) federal government employees in North Carolina; and (f) "sellers of agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer."

Businesses with just one employee, whose work involves the presence of radiation, are required to have workers' compensation coverage.

Individuals who are sole proprietors, members of LLCs, and partners are not counted automatically as employees. Corporate officers may elect to be excluded from coverage but are still counted in determining whether a business has three or more employees.

An employer is not relieved of its liability under the Act by calling its employees "independent contractors." Even if the employer refers to its workers as independent contractors and issues a Form 1099 for tax purposes, the Industrial Commission may still find that the workers were in fact employees, based upon its analysis of several factors, including but not limited to the degree of control exercised by the employer over the details of the work.

If you subcontract work to a subcontractor who does not have workers' compensation insurance, you may be liable for the work-related injuries of the subcontractor's employees, regardless of the number of employees you or the subcontractor employs.

If You Fail to Carry Workers' Compensation Insurance, You May:

- 1) Face stiff financial penalties;
- 2) Be charged with a misdemeanor;
- 3) Be charged with a felony; and
- 4) Be imprisoned.