



Workers' Compensation

WORKERS' COMPENSATION MYTH: "I DON'T NEED COVERAGE BECAUSE I USE INDEPENDENT CONTRACTORS"

Last year the Workers' Compensation Fraud Unit in the Nevada Department of Justice prosecuted over 200 employers that failed to provide workers' compensation coverage. One of the most common excuses made by employers is that coverage is not needed because the employer uses "independent contractors" instead of employees. However, harboring such beliefs may result in employers facing criminal charges and being held responsible for the medical benefits paid for the injured worker.

Nevada law requires a person to provide workers' compensation coverage for employees but also subcontractors, independent contractors and their employees. Such contractors are deemed to be employees of the prime contractor unless the subcontractor is an "independent enterprise."

To pass the "independent enterprise" test, the subcontractor must hold self out as a separate business by having a separate business or occupational license or by owning or renting property used in the business. In addition to being a separate business, the work being performed must be the type of work normally done by an independent contractor rather than by employees.

Some employers that have been prosecuted believe the requirement to provide workers' compensation can be avoided just by labeling the employees as independent contractors or by entering into a written contract with the employee. But labels alone are not successful in avoiding criminal charges.

One example of the common type of dubious claims made involves a Las Vegas trucking company. A driver was asked to sign an independent contractor agreement. The driver, however, worked regular shifts, drove the company truck and was told what routes to take. The driver was not responsible for the costs associated with the operation of the truck. Therefore, this driver was an employee and his employer was prosecuted despite his belief he was using an independent contractor.

The amount of control the employer exercises over "how" the job is performed is more important than what one tries to call the legal relationship. An employer controls how an employee performs the job. With an independent contractor, the employer only controls the actual result of the job. Also, even if he or she is an independent contractor, an employer still may have responsibility to provide workers' compensation coverage because the contractor is not considered an "independent enterprise."

Contractors on construction projects need to be particularly careful. The "independent enterprise" exception does not apply to construction projects. There are no exceptions when the work being performed requires a contractor's license. Prime contractors must ensure subcontractors have and maintain coverage because the prime contractor is always responsible for injuries to employees of independent subcontractors on construction projects.

Running a business based on workers' compensation mythology, rather than the law, is a very bad idea. The consequences are not worth the risks. Failing to provide coverage is a crime in Nevada and will be prosecuted. Employers face paying criminal fines, costs of investigation and restitution for the benefits provided to the uninsured worker. Anyone suspecting this type of fraud or any fraud associated with workers' compensation should contact the Attorney General's fraud hotline at **1-800-266-8688**. Other information about detecting workers' compensation fraud is also available on our Web site:

<http://ag.state.nv.us/org/bcj/wcfu/wcfu.htm>

Brian Kunzi, Director, Workers' Compensation Fraud Unit

(Revised 8/10/2006)