

## SB 108- Revision of Requirements for Independent Contractor Exemption Certificates

**Businesses or hiring agents who utilize independent contractors need to be aware of these changes in order to obtain the protections of the law.**

New legislation addressing Independent Contractors is effective April 28, 2005, and came about as a result of a study authorized by the 2003 legislative session.

The legislation restores the conclusive presumption of an independent contractor exemption certificate that was previously overturned by a court decision.

**The law now requires that independent contractors either have the exemption or purchase workers' compensation insurance coverage on themselves. Failure to obtain the exemption or workers' compensation insurance may result in the worker being treated as an employee of the hiring agent. Hiring agents may be responsible for claims for injuries or occupational diseases and for payment of premium on their wages.**

To be **conclusively presumed** to be an **independent contractor**, the Department of Labor & Industry (DOLI) must:

- approve an application for an independent contractor exemption certificate based upon a **submission of a complete application after April 28, 2005**, and;
- the **person** must be **working under** the Independent Contractor exemption certificate

**"Person"** means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

To be **"working under"** an Independent Contractor exemption certificate the worker must be performing the **type of work** listed on the certificate and the hiring agent and the independent contractor **do not have a written or an oral agreement** that the independent contractor's certificate holder's **status is that of an employee**.

### Obtaining the exemption

To now obtain an independent contractor exemption certificate from the DOLI, an **applicant must swear to and acknowledge**:

- that the applicant **has been and will continue to be free from control** or direction over the performance of the person's own services, both under contract and in fact; and

*(independent contractors and businesses/hiring agents are encouraged to enter into written agreements expressing the terms of the services. A sample memorandum of understanding is available on the DOLI's website)*

- that the applicant is engaged in an **independently established trade, occupation, profession, or business** and will provide sufficient documentation of that fact to the department.

*(a point system is being utilized to determine if an applicant meets this requirement)*

### **Exception for persons in their own fixed business location**

The worker who regularly and customarily performs services at their own fixed business location is not considered to need an independent contractor exemption or coverage- (for example a main street business owner- or professional services such as an attorney or CPA provides).

### **Validity of exemptions issued prior to the new law**

Independent contractor exemption certificates issued prior to the April 28, 2005 date will still be valid, but will not have the conclusive presumption attached. Any worker with the "old" exemption will need to be evaluated to determine if they are an independent contractor or if they are an employee for workers' compensation purposes.

In order to obtain the conclusive presumption status of the independent contractor exemption, businesses/ hiring agents may want to request that any independent contractors obtain a new exemption.

### **Suspension or Revocation of an Independent Contractor exemption by DOLI**

The DOLI may now suspend or revoke an independent contractor's exemption certificate. However, the suspension or revocation of the exemption does not invalidate the independent contractor's waiver of the rights and benefits of the Workers' Compensation and Occupational Disease Acts until the DOLI gives notice of the suspension or revocation to the hiring agent.

### **Information**

For more information, questions, or to obtain the application forms, please visit the Independent Contractor Central Unit website at <http://www.mtcontractor.com> or contact them by telephone at (406) 444-9029.