

Whitepaper: Alaska House Bill 79



On August 27th, Alaska Governor Bill Walker signed into law House Bill 79, bringing changes to several areas related to workers compensation that business owners should be aware of. Earlier this year, HB79 passed in the house 25-14, and unanimously in the Senate 19-0.

The bill was supported by the Alaska Truckers Association (ATA), the Alaska chapter of the National Federation of Independent Businesses (NFIB) and the Alaska Homebuilders Association (AHBA) among others.

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With the passing of the new law, there are several key areas that were addressed:

- Reduction of administrative costs
- Closes the state second injury fund
- Creation of a legislative workers comp group tasked with reviewing the workers comp system
- **Clarification of independent contractors in an effort to reign in workers misclassification**
- **Addition of personal liability for some owners of businesses for workers comp violations**

The most important component for business owners are those last two.

Business Insurance Associates has been **advising our clients for months to review their subcontractor and vendor relationships** to confirm those will stand up to scrutiny from the Department of Labor, the Internal Revenue Service, or workers compensation carriers and auditors, and now failing to address these exposures can come with even more financial implications. Sending someone a 1099 doesn't in itself establish the other party as an independent.

“Providing a clear definition of independent contractors will help businesses be successful and in compliance, and will help workers clearly understand what constitutes independent contractor status.”

– Heidi Drygas, Labor Commissioner



Text from HB 79

“If an employer is a corporation, limited liability company, or limited liability partnership, corporate executive officers or members, or partners who have at least a 10 percent ownership in the business, entity shall be personally, jointly and severally liable together with the business entity for the payment of all compensation or other benefits for which the business entity is liable under this chapter if the business entity is not insured or qualified as a self-insurer at the time of the injury or death.”

The text goes on to note that the same personal responsible can be attributed to the civil penalties that could result from lapses in coverage.

Additional penalties are outlined for cases where employers fail to insure, or are underinsured as a result of **misclassifying employees**.

Text from HB 79

“The division may assess may a civil penalty of up to three times the workers comp premium that the employer would have paid if the employer had insured, provided the right security, or properly classified employees.”

The act further notes which professions are exempt from having to comply with workers compensation:

- A part time babysitter
- A cleaning person
- Harvest help and similar part-time or transient help
- A person employed as a sports official on a contractual basis for amateur sports
- A person employed as an entertainer on a contractual basis
- A commercial fisherman
- Taxicab drivers under most circumstances
- A participant in the Alaska temporary assistance program
- Professional hockey players or coaches under most circumstances
- A Real estate licensee under most circumstances
- **A person employed as an independent contractor under right circumstances**



Who is an Independent Contractor?

On the prior page we noted among those excluded from workers compensation requirements, were “a person employed as an independent contractor **under the right circumstances.**” HB 79 goes on to define what constitutes an independent contractor:

- Maintains a licensed business, the success or profitability of which does not depend exclusively or primarily on the individual for whom or the entity for which services are performed.
- Has a Federal Employer Identification (FEIN) number issued by the Internal Revenue Service (IRS) or has filed business or self employment income tax returns with the IRS the previous tax year, or for new businesses that they intend to file as such for the coming term.
- Has an expressed contract to perform the services
- Maintains liability insurance or other insurance policies necessary to protect the employees, financial interests and customers of the person’s business.
- Is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom or entity for which the services are provided to specify the desired results, completion schedule or range of work hours.
- Is engaged in a trade, occupation, profession or business to provide services that are outside the usual course of business for the individual for whom or the entity for which the services are performed
- Incurs most of the expenses for materials, tools, equipment, labor, and other operational costs necessary for the person’s business.
- Has the opportunity for profit and may suffer loss based on the management of revenue and expenses with the person’s business.
- Does not work as part of a team of individuals or entities on a singular task, such as painting a building, or installing a roof, where the work performed by the person cannot be clearly isolated from the work performed by other individuals or entities
- Hired, pays, controls and fires any employees required to perform this work for which the person was hired
- Maintains a business location separately from the location of the individual for whom or the entity for which services are performed

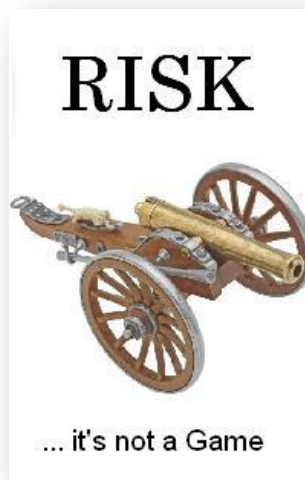
The time to review your relationships with other parties is now. If you are using subcontractors that don’t stand up to the scrutiny outlined above, you can be held liability for employee misclassification and that extends into personal liability for the owners of corporations and companies.



Another significant change involves the employee classification of executive officers. Prior to HB79, only corporate officers were considered to be employees by the State of Alaska, and required the filing of an executive officer waiver in order to be excluded from coverage (and premiums).

Now, Corporate officers, non profit corporate officers, and LLC members are all considered employees going forward if they don't own a minimum of 10% of the corporation or LLC.

With changes in House Bill 79 coming into law, employers will find they not only can be held **personally liability for workers misclassification and subject to fines and punitive damages, they can also be imprisoned by a court of law.**



Self Audit of Your Independent Contractors

	Yes	No
1. I have formal written contracts with all of my subcontractors and retain those on file?	_____	_____
2. I retain copies of all licenses and insurance certificates for my subcontractors?	_____	_____
3. I require my subcontractors name me additional insured on liability coverages?	_____	_____
4. I require my subcontractors to carry workers comp coverage even with no staff?	_____	_____
5. Do I withhold payroll taxes and pay subcontractors with a 1099?	_____	_____
6. Does subcontractor have their own FEIN #?	_____	_____
7. Do my subcontractors understand the tax implications and their tax responsibilities?	_____	_____
8. Do my subcontractors provide their own tools to perform their work?	_____	_____
9. Do subcontractors have their own business premise separate from mine?	_____	_____
10. Do you directly control the means and performance of subcontractors?	_____	_____
11. Do you have involvement in subcontractors hiring, managing and firing of employees?	_____	_____
12. Do you have multiple subs on a single job and/o single task (ie. drywall, painting, etc)?	_____	_____

For a full assessment contact Business Insurance Associates Inc. at (907) 274-4142 or email info@businessinsuranceassociates.com.