

Worker's Compensation Best Practices When Hiring an Independent Contractor

In Vermont, workers' compensation and unemployment insurance are governed by two separate and distinct laws. **This guidance is specific to workers' compensation as it applies to hiring situations that include LLCs, sole proprietors, corporations and partnerships.**

Unemployment insurance guidance and best practices can be found on the Vermont Department of Labor website.

If you pay an individual to perform work for your business, you are required to provide workers' compensation insurance for that individual **unless:**

- You can demonstrate the individual is covered by his/her own workers' compensation policy,
 - You can demonstrate that the individual is the sole proprietor or partner owner of a business that performs work that is distinct and separate from work that your business performs,
- OR**
- The individual is a member, manager or executive officer of a Corporation or LLC registered with the Vermont Secretary of State's office or with another State **
- AND**
- The individual has filed an exclusion using Form 29 with the Vermont Department of Labor and had it APPROVED.

It should be noted that if a hiring entity is not responsible for workers' compensation coverage, it is potentially civilly liable for injuries to its independent contractor, and the possible civil damages may be considerably costlier than workers' compensation coverage.

BEST PRACTICES WHEN HIRING AN LLC or CORPORATION TO PERFORM INDEPENDENT WORK

- Make sure that the services being performed by the corporation/LLC are pursuant to a written agreement between the corporation/LLC and you as the hiring entity. This written agreement should explicitly state that the individual corporate officer or individual LLC member is not considered to be an employee, and is working independently, and should contain information regarding the individual's/LLCs election to not purchase workers' compensation coverage.
- Request and obtain a copy of either a valid workers' compensation policy or an approved Form 29 form that allows the individual corporate officer/individual LLC member to exclude himself or herself from workers' compensation coverage. Proof of this exclusion should be filed with any written contract or agreement for your records.

****BEST PRACTICES WHEN HIRING A SOLE PROPRIETOR OR PARTNERSHIP TO PERFORM INDEPENDENT WORK**

- Make sure that the services performed by the sole proprietor or partnership are pursuant to a written agreement between the sole proprietor or partnership and you as the hiring entity. This written agreement should explicitly state that the individual is not considered to be an employee, is working independently, and should contain information regarding the election of the sole proprietor or partnership to not purchase workers' compensation coverage.
- If a hired sole proprietor or partnership has employees, it must have workers' compensation. Request and obtain proof of insurance upon hiring.



*These tests are very fact-specific, meaning that the outcome can change when applied to different scenarios. When applying either test, it is important to recognize that the current law places burden of proof on the hiring entity. It is the responsibility of the hiring entity to demonstrate through facts that something other than an employee-employer relationship exists. Narrow and specific exceptions may apply to your business.