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## **Vermont Department of Financial Regulation**

### **Division of Insurance**

#### **Insurance Bulletin No. 197**

#### **Application of Statutory Employee Exception Following *Koski***

The purpose of this Bulletin is to provide the insurance industry guidance when performing workers' compensation audits regarding the statutory employee exception following the Department of Labor's (DOL) decision in *Griffin Koski v. Black Rock Construction LLC*, Opinion No. 25-15 WC.

#### **Background**

Following its *Koski* decision, the DOL issued guidance to businesses and individuals who engage a third-party to provide services ("Contracted Party") when a Contracted Party is a duly formed and registered limited liability company (LLC) or corporation. The DOL guidance identifies the situations for which a business or individual that hires a Contracted Party would not be considered its statutory employer. This Bulletin intends to provide the same guidance for the insurance industry.

#### **The Application of 21 V.S.A. § 601(14)(H) Following *Koski***

With DOL approval, a corporation or LLC may elect to forgo worker's compensation coverage for up to four (4) of its members, managers or executive officers. Accordingly, if a corporation or LLC has: (1) four (4) or fewer members, managers, or executive officers; (2) no other employees; and (3) approved Form 29 exclusions for each member, manager or executive officer, then it is not required to maintain worker's compensation coverage.



Accordingly, a business or individual that hires a Contracted Party shall not be considered its statutory employer if:

1. The Contracted Party is duly registered in Vermont as a corporation or LLC;
2. The Contracted Party is contracted with as a corporation or LLC rather than as an individual; and
3. The Contracted Party has four (4) or fewer members, managers, or executive officers; no other employees; and the requisite Form 29 exclusions have been approved for each member, manager and or executive officer.

The statutory exception only applies to individual corporate officers, managers or LLC members who have excluded themselves from coverage with an approved Form 29. If the corporation or LLC has other non-excluded workers, the hiring entity will be considered the statutory employer of those workers if they are performing work within the nature of the hiring entity's business. In those circumstances, the hiring entity will need worker's compensation coverage for the non-excluded workers.

For further information, interested parties should contact Christina Rouleau, Deputy Commissioner of Insurance, at 802-828-2910.

Dated:

12/20/17



Michael Pieciak, Commissioner