

Law



Consider getting worker's compensation insurance

By Robert Goff

Any business should consider purchasing worker's compensation insurance. All 50 states have worker's compensation statutes requiring employers to compensate their employees who are injured on the job. Furthermore, several states require businesses to compensate a subcontractor's employee who is injured on the job if the subcontractor does not pay the benefits.

Benefits can be expensive

If an employee is injured at work causing a reduction in his wages due to partial or complete disability, his employer is liable for a percentage of the employee's wages subject to a maximum weekly amount set by law. The percentage of wages for which the employer is liable is determined by the nature and extent of the employee's injury. In the event of death, the employer is responsible for a lump-sum death benefit, currently just under \$70,000. An employer is also liable for the retraining or re-education of an employee who can no longer perform his previous work by reason of a work injury, subject to a statutory maximum.

Furthermore, the employer is liable for reasonable and necessary medical expenses to treat the employee's injuries resulting from the work injury, including any co-payments. Lastly, the employer is liable for out-of-pocket expenses incurred in securing medical treatment such as travel expenses. If an employer cannot pay worker's compensation benefits when due, the unpaid amount is a lien on the employer's property with the same priority as unpaid wages.

The law requires insurance or security

Private sector employers must purchase worker's compensation insurance or self-insure. If an employer self-insures, it must provide sufficient security such as an indemnity bond to secure payment of worker's compensation benefits when they may become due.

Determining if you have employees

The basis of worker's compensation liability is the employer-employee relationship. Employers are liable to their employees for worker's compensation benefits. A business is not liable to its independent contractors for worker's compensation benefits since independent contractors are not employees. Independent contractors are usually hired to accomplish a particular task in the manner they choose for a fixed price within a short period of time. Employees are usually hired long-term, paid an hourly wage or annual salary, and supervised by their employers. In

Kentucky, whether a worker is an employee or an independent contractor depends upon a case-by-case subjective analysis using nine factors. Four of most importance:

- What is the nature of the work being performed as it relates to the business of the alleged employer? If the alleged employee is performing some work that is a key component of the employer's business, he is likely an employee. A plumber fixing the bathroom in an automobile repair shop weighs in favor of independent contractor with respect to the automobile repair business since plumbing is not a key component of automobile repair. If the alleged employer is the plumbing contractor that sent the plumber, this factor weighs in favor of an employee since plumbing is a key component of the business of a plumbing contractor.
- How much control is exercised over the worker by the alleged employer? The more control a business exercises over the details of a worker's work, the more likely the worker is an employee. The automobile repair shop would likely show the plumber the leak in the bathroom and then let him figure out how to fix it. That would weigh in favor of independent contractor. However, the plumbing contractor might provide instruction to the plumber regarding how to fix a certain type of leak. If the plumber feels compelled to follow that instruction, this factor weighs in favor of employee status.
- Is there any professional skill required of the worker? The more skill that a worker has, the more likely he is considered an independent contractor. A plumber possesses a great amount of skill and expertise in the art of plumbing. This factor would favor independent contractor status as the plumber calls upon his own skill and expertise more so than instructions from an employer. A cab driver is not a member of a skilled profession. There is no great skill or knowledge required to drive a car. The cab driver is going to rely upon his employer's instructions rather than his own driving. Thus, this factor would favor employee status.
- What is the true intention of the parties? How do the worker and the business classify their relationship? Do they consider the worker to be an employee or independent contractor? Even if the business classifies the worker as an independent contractor, if the classification is just a method of avoiding the worker's compensation laws and the worker is really treated as an employee, the worker will be considered an employee despite the classification. Other factors favoring employee status are: (1) tools and workplace provided by the employer rather than the worker; (2) a long term of employment; (3) payment by the hour rather than payment by the job; and (4) the type of work performed is usually performed by employees or independent contractors.

The bottom line: Get insured

For those businesses that, for good reason, aren't interested in assuming the risk inherent in applying a subjective test, there's an easy solution, worker's compensation insurance. Even if a business has only independent contractors, it can still be liable to worker's compensation benefits for injured employees of its subcontractors. There are two easy solutions to that potential liability: get worker's

compensation insurance that will cover worker's compensation liability for employees of subcontractors, and include provisions in contracts requiring subcontractors to carry sufficient worker's compensation insurance.

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