

Understanding the Workers' Comp Reform Bill for the Construction Industry

For the benefit and understanding of our members, the new law:

Requires everyone in the construction industry to be covered by workers' compensation – or be specifically exempted.

- Reinstates the requirement that sole proprietors and partners engaged in the construction industry carry workers' compensation insurance on themselves, but provides a mechanism for those individuals and certain other construction services providers to obtain an exemption from such requirement.

Identifies those who may request an exemption.

- Allows any of the following construction services providers who are engaged in the construction industry to request an exemption from the requirement that such person be covered by workers' compensation:
 - Officer of a corporation; provided that no more than three officers of one corporation shall be eligible for an exemption;
 - Member of a limited liability company, if such member owns at least 30 percent of the company;
 - Partner in a limited partnership, limited liability partnership or a general partnership if such partner owns at least 30 percent of the partnership;
 - A sole proprietor; or
 - Up to three owners of certain family owned business entities.

Limits those who may request an exemption.

- Prohibits any affiliate of certain already exempt construction services providers from obtaining an exemption. States that a construction services provider shall only be eligible for one exemption, regardless of the number of business entities with which the provider may be associated.

Requires an applicant for an exemption to have a valid contractor's license or to obtain a registration from the Secretary of State.

- Requires any construction services provider requesting an exemption to first obtain from the board for licensing contractors either a valid license or obtain from the Secretary of State a construction services provider registration.

Lists the information to be provided to the secretary of state in order to obtain an exemption.

- Requires a construction services provider requesting exemption to request an exemption from the secretary of state's office. In order to obtain such exemption, the provider must submit the following:
 - Name, date of birth, physical address and telephone number;
 - Name of business entity through which the applicant is seeking an exemption;
 - Federal Employer Identification Number and last four digits of the provider's social security number;
 - A license or a registration number issued by the board for licensing contractors;
 - A current license issued by a local government if the business entity through which the applicant seeks an exemption is required by law to obtain an exemption; and
 - Such other information the secretary of state deems necessary to identify such person.

Requires anyone who receives an exemption must be current in paying all taxes due.

- Requires a construction services provider who requests an exemption to be active and in good standing as reflected in the records of the secretary of state, which includes for some business entities being in good standing with the Tennessee Department of Revenue.

Sets the fees to be paid for an exemption and registration card, which are both good for two years.

- Requires the construction services provider requesting an exemption to pay \$100 for a registration card, \$100 for an exemption card, and such other fees associated with the

application, renewal or revocation of the exemption. The exemption is good for two years and is renewable. The exemption may be revoked in certain circumstances.

- It is important to note that the insurance industry is expected to reduce the \$750 minimum premium policy to \$500 or less, this resulting in a net positive for many subcontractors.

Allows an exempted person who is injured to sue at common law.

- Provides that any action to recover damages by a construction services provider who maintains a workers' compensation exemption shall be at common law; provided that such provider may not sue to establish workers' compensation coverage.

Provides that a general contractor may continue to be liable to some but not all subcontractors.

- General contractors will be able to determine those subcontractors that have exempted and those that have not exempted, this allowing them to manage potential workers' comp liability.
- Provides that general contractors will continue to be liable in certain circumstances for injuries to subcontractors, as is the case under current law.

States that no more than three persons on any one commercial job are eligible to claim an exemption.

- Prohibits more than three persons on one commercial job from being exempt from workers' compensation coverage.

Increases the penalty for an employer who deducts any portion of the workers' compensation premium from an employee's wage or salary.

- Increases the penalty for any employer who deducts any portion of the workers' compensation premium from the employee's wages or salary from \$50 to the amount of premium that was deducted from the employee's wages or salary.

Substantially increases the penalties for an employer engaged in the construction industry who fails to comply with the law.

- Substantially increases the penalties for any employer engaged in the construction industry that: fails to maintain workers' compensation insurance; fails to comply with the Department of Labor and Workforce Development's order to obtain workers' compensation insurance; or commits multiple violations of failing to maintain workers' compensation insurance.

Establishes a task force related to employee misclassification in the construction industry.

- Establishes a task force that will study and make recommendations regarding issues related to employee misclassification in the construction industry.
- We expect the task force will review the possibility of increasing the family-owned exemption threshold (currently three) and its the impact on fair bidding.

Requires some of the fees collected by the secretary of state to be used for investigation and prosecution of employee misclassification.

- Requires that certain fees collected by the secretary of state shall be deposited in a fund and such money be used to pay all costs incurred by the Secretary of State that are associated with the administration of the exemption program, for education of employers and employees regarding the requirements of this part, and in support of the ongoing investigation and prosecution of employee misclassification.

Makes it a crime for an employer to force an employee to obtain a workers' compensation exemption or fire an employee who does not obtain a workers' compensation exemption.

- Creates an offense for an employer to knowingly coerce a job applicant to obtain a workers' compensation exemption, or discharge or take any adverse action against an employee because such employee failed to obtain a workers' compensation exemption.

Phases in various provisions over the next year.

- Construction services providers not currently licensed by the Board for Licensing Contractors, but who qualify for a

- construction services provider, can apply for a workers' compensation exemption on or after Jan. 1, 2011.
- Construction services providers licensed by the Board for Licensing Contractors can apply for a workers' compensation exemption on or after Feb. 1, 2011.
 - Exemptions on the secretary of state's registry shall take effect March 1, 2011.
 - The increased penalties shall take effect July 1, 2011.