

Doing Business in Missouri ...

Hiring Employees

Doing Business in Missouri...Hiring Employees is designed to provide information to new or existing business owners on the requirements involved in hiring and paying employees.

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Section 5

Hiring Employees

At some point, most businesses are faced with the need to hire employees. This chapter provides an overview of what is involved in hiring and paying employees.

As you may have already surmised, starting and operating a business involves a lot of paperwork. Hiring employees (or being a corporation with you as the only employee) multiplies the amount of paperwork you must complete.

Before you actually hire, we recommended that you consult with your accountant or with an employer service representative at your local Division of Workforce Development Office. The local Division Office can assist you with locating employees. Visit their website: www.ded.mo.gov/wfd/. A great deal of information can also be found on the [Great Hires!](http://www.dolir.mo.gov/resource.pdf) web site and at: www.dolir.mo.gov/resource.pdf.

You will also want to obtain a copy of [Circular E, Employer's Tax Guide](#) from your local IRS office or call (800) 829-3676. Circular E explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee's paycheck.

Tips on Hiring

Who Are Employees?

Individuals who do work for you may be classified into one of four categories of service providers:

- Employees
- Independent contractors
- Statutory employees
- Non-statutory employees

You, the hiring company, are the service recipient. That is, you receive the service or product and you pay to have that service or product provided to you.

Your responsibility for payment of state and federal taxes, social security (FICA), unemployment tax, and employee benefits depends on which of the four categories the workers fall under. Many companies, small and large, would prefer to hire some, or even all, of their workers as "independent contractors." When an independent contractor provides a service or product, the service recipient does not have to withhold employment taxes, pay social security taxes (FICA), or pay unemployment tax.

The category, into which the workers fit, however, is determined by the conditions under which they work and the kind of work they do. You may not simply select a category define them as you desire. Choosing the correct categories for the people who do work for you may be critical to the continuation of your business. The status of workers depends not on what the workers or the service recipients want, but on what work is provided and under what conditions.

Common Law Employees

A worker's status as an employee or as an independent contractor hinges on the right of the business to control the worker. Anyone who performs a service for wages is an employee if the employer can control what will be done and how it will be done.

For employment tax purposes, there is no distinction between classes of employees. Managers and other supervisory personnel are employees. An officer of a corporation is generally an employee, but a director is not. An officer who performs no services or only minor services and neither receives nor is entitled to receive any pay, is not considered an employee.

Independent Contractors

Independent contractors are considered self-employed. As such, they are responsible for reporting their income and paying the appropriate state and federal taxes. The hiring company is not required to pay benefits or worry about minimum wage regulations. All the hiring company must do is file federal income tax form 1099 at the end of the year. The 1099 is a federal tax form stating the amount paid to independent contractors by the company during that year. In addition to the savings in tax, companies hiring independent contractors save the cost of the bookkeeping associated with those taxes.

People such as lawyers, contractors, subcontractors, public stenographers, and auctioneers who follow an independent trade, business, or profession in which they offer services to the public, are generally not employees. The final status determination depends upon the facts of each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

The Internal Revenue Service (IRS), as part of its program to collect the maximum amount of tax owed, has begun to investigate and prosecute

cases where individuals are classified as independent contractors.

The list that follows gives 20 factors or "tests" used by the IRS when determining whether a person is an employee or an independent contractor. The question of "who controls the details?" appears to be the primary basis on which the determination is made.

No single factor or small group of factors can be taken as conclusive evidence of the presence or absence of control. To determine a worker's status, all the factors must be evaluated. The weight given to the individual factors is not equal, and some factors may not apply to certain occupations. Obtaining determination as an independent contractor can be very difficult.

These 20 factors show control over details of work and must be weighed against or compared to those that point to an independent contractor status. The main factors to be considered in determining control are as follows:

1. **Actual instruction or direction of worker.** A worker who is required to comply with instructions about when, where and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished.
2. **Training** of a worker by an experienced employee working with him by correspondence, by required attendance at meetings and by other methods is a factor indicating control by the employer over the particular method of performance. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his own methods and receives no training from the purchaser of the services.
3. **Integration of the person's services** in the business operations generally shows

that he is subject to direction and control. When the success or continuation of a business depends to an appreciable degree on the performance of certain kinds of services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

4. **If the services must be rendered personally**, it indicates an interest in the methods, as well as the results. Lack of control may be indicated when the person has the right to hire a substitute with the permission or knowledge of the employer.
5. **Hiring, supervising, and payments to assistants** on the same job as the worker generally show employer control over the job. Sometimes one worker may hire, supervise and pay the other workers. If this is done under a contract requiring that the worker furnish materials and labor and under which he is responsible only for the attainment of a result, the worker is an independent contractor. On the other hand, if he does so at the direction of the employer, he may be acting as an employee in the capacity of a foreman for, or representative of, the employer.
6. **The existence of a continuing relationship** between an individual and the person for whom he performs services tends to indicate an employer-employee relationship. If the arrangement contemplates continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, they are seasonal in nature or the person actually works for only a short time.
7. The **establishment of set hours of work** by the employer bars the worker from

being master of his own time, which is the right of the independent contractor.

8. **Full-time work** for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when, and for whom, he chooses. Although not specified, full-time work may be required. For example, setting a quota, which requires all his working time, or denying him the right to work for anyone else may indicate full-time employment.
9. **Doing the work on the employer's premises** implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he wants to use the facilities. However, the fact that work is done off the premises does not always indicate freedom from control since some occupations, i.e., employees of construction contractors, are necessarily performed away from the premises of the employer.
10. If the **order of the performance of services** is, or may be, set by the employer, control by the employer may be indicated.
11. The **submission of regular oral or written reports** indicates control since the worker must account for his actions.
12. If **the manner of payment** is by the hour, week or month, an employer-employee relationship probably exists; whereas, payment on a commission or job basis is customary where the worker is an independent contractor. The

guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earning tends to indicate the existence of an employer-employee relationship.

13. Payment of the **worker's business expenses** by the employer indicates control of the worker.
14. The **furnishing of tools, materials, etc.**, by the employer indicates control over the worker.
15. A **significant investment by the worker** in facilities used by him in performing services for another tends to show an independent status. And, the furnishing of all necessary facilities by the employer tends to indicate the absence of an independent status on the part of the worker. Facilities include, generally, equipment or premises necessary for the work but not tools, instruments, clothing, etc., that are commonly provided by employees in their particular trade. In order to be significant, the investment must be real, essential and adequate.
16. The **possibility of a profit or loss for the worker** as a result of his services generally shows independent contractor status. Factors that affect whether or not there is a profit or loss are whether: the worker hires, directs and pays assistants; he has his own office, equipment, materials or other facilities for doing the work; he has continuing and recurring liabilities or obligations; his success or failure depends on the relation of his receipts to his expenditures; he agrees to perform specific jobs for prices agreed upon in advance; and he pays expenses incurred in connection with the work.
17. **Working for a number of persons at the same time** often indicates independent contractor status because the

worker is usually free, in such cases, from control by any of the firms. It is possible, however, that a person may work for a number of people or firms and still be an employee of one or all of them.

18. The **availability of services to the general public** usually indicates independent contractor status. This may be evidenced by the worker having his own office and assistants, hanging out a "shingle" in front of his home or office, holding business licenses, maintaining business listings in telephone directories or advertising in newspapers, trade journals, magazines, etc.
19. The **right of discharge** is that of an employer. An independent contractor, on the other hand, cannot be "fired" without incurring liability if he is producing a result that measures up to his contract specifications. A restriction on the employer's right to discharge in a labor union contract does not detract from the existence of an employment relationship.
20. The **right to quit at any time** without incurring liability indicates an employer-employee relationship. An independent contractor usually agrees to complete a specific job and he is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.

Statutory Employees

Certain categories of workers are treated, by statute, as employees. Any agent or commission driver who distributes food products (other than milk), or laundry for his or her principal; full-time traveling salespersons soliciting orders for wholesales, retailers, contractors or operators of hotels, restaurants, or similar establishments; full-time life insurance agents whose principal business activity is selling life insurance or annuity contracts; and an individual who works

at home on materials or goods supplied by the employer, that must be finished to the employer's specifications and that must be returned to an employer or a person named by an employer are employees.

In order to be considered statutory employees, they must perform substantially all of the services personally, have no substantial investment in facilities (other than transportation), and perform services in a continuing relationship.

Statutory Non-Employees

There are two categories of statutory non-employees: direct sellers and licensed real estate agents. They are treated as self-employed for all federal tax purposes, including income and payment of taxes if:

- Substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other input, rather than to the number of hours worked.
- Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes.
- Direct sellers include persons falling within any of the following groups:
- Persons engaged in selling consumer products in the home or place of business other than in a permanent retail establishment.
- Persons engaged in selling consumer products to any buyer on a buy-sell basis, a deposit commission basis, or any similar basis prescribed by regulations, for resale in the home or at a place of business other than a permanent retail establishment.
- Persons engaged in the trade or business of delivering or distributing newspapers or shopping news – including any services directly related to such delivery or distribution.

Direct selling includes activities of individuals who attempt to increase direct sales activities of the direct sellers and who earn income based on the productivity of their direct sellers. Such activities include providing motivation and encouragement; imparting skills, knowledge or experience; and recruiting.

Licensed real estate agents are individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

In the state of Missouri, the following jobs are exempted in Chapter 288 of the Missouri Revised Statutes from coverage of unemployment insurance and taxes; certain for-hire motor carriers; a worker in a beauty salon who does not receive compensation and pays rent; a person under 18 who delivers newspapers; direct sellers delivering or distributing newspapers or shopping news; a sole proprietor or partner's parents, spouse and children under 21; workers covered by the federal unemployment insurance system, including railroad workers and federal employees; service in the employ of an instrumentality owned by a foreign government; service in the employ of a foreign government; service covered by an approved agreement with an agency charged with administering any other state or federal unemployment insurance law; service by a student earning less than \$50 per quarter from the school, excluding room, board and tuition; a licensed insurance agent remunerated solely by commission; certain subsidized employment programs; certain work-study programs; a licensed real estate person with at least 80 percent of remuneration for services rendered will not be treated as an employee for federal tax purposes; direct sellers of consumer products, not affiliated with a retail establishment, with at least 80 percent of remuneration services are not treated as employees for federal tax purposes; a volunteer research subject paid on a per study basis for scientific, medical or drug related testing by a certain kind of organization; full-time student working less than 13 weeks for an organized

summer camp; and remodeling salesperson acting as an independent contractor as determined by the IRS.

There are additional exemptions for certain governmental and non-profit employers. For more information or a specific determination refer to Chapter 288 of the Missouri Revised Statutes at www.moga.mo.gov/statutesearch/.

Employment and Wages

Reportable wages include gross cash payments plus the reasonable cash value of other goods or services, which the employee receives for work performed in lieu of money. The value of other considerations is excluded from wages with respect to domestic or agricultural employment. Bonuses, commissions, vacation pay, holiday pay and termination pay are wages. Only tips reported in writing by the employee to the employer are reportable and taxable. Allocated tips are not reportable or taxable. No payroll deductions are excluded from wage amounts reportable.

Amounts paid by the employee and/or employer into a cafeteria plan are not reportable or taxable unless they are reportable for federal unemployment tax (Section 288.036.1(9)). Elective employee salary reduction contributions to cash or deferred arrangement under the Internal Revenue Code Section 401(k) are not exempt.

The law exempts from wages, payments made by an employer to or on behalf of a worker for medical or hospitalization expense or death, including payments made into a fund, annuity, or for insurance, for these purposes, provided such payments are made under a plan that applies to all workers or a class of workers. Payments made to an employee for sickness or disability would be wages unless made under a workers' compensation law. Such payments made by a third party may be reported as wages by such third party if no accounting of payments is made to the employer.

The law further exempts from wages any payments on account of sickness, accident, disability, or medical or hospitalization expenses that are made by an employer to or on behalf of an individual after the expiration of six calendar months following the date an individual last worked, regardless if such payments were made under a plan or a workers' compensation law.

Wages do not include payments by an employer, to or on behalf of an individual, from or to a trust, described in U.S.C. 401(a) that is exempt from federal income tax under 501(a), or payments under or to an annuity plan that meets the tax exempt requirements of 404(a)2 of the Internal Revenue Code.

For additional information, please request a copy of the booklet, "Employers' Rights and Responsibilities," either from the Division of Employment Security, P.O. Box 59, Jefferson City, MO 65104-0059; (573) 751-3215; or download it at: www.dolir.mo.gov/es/ui-tax/M-INF-151.pdf.

More on this topic can be found in the article Employee or Independent Contractor (What is the Difference?)" online at www.missouribusiness.net/docs/employee_or_contractor.asp.

Federal Requirements

Obtaining an Employer Identification Number

Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain an Employer Tax Identification Number, which is required by federal law if you are an employer, partnership, limited liability company, or corporation. Some entities, such as financial institutions, also require a business to have an identification number.

The instructions and application form (SS-4) are available from the Internal Revenue Service or online at www.missouribusiness.net/irs/sections/section2/feinfedemployerid.htm and there is an online fill-out form at: www.irs.gov/businesses/small/article/0,,id=102767,00.html.

Withholding Taxes

Employers are generally required to withhold federal income tax, social security tax, and Medicare tax from their employee's pay. Don't forget that you are not your own employee. Officers of their own corporations can be employees, but partners and sole proprietors cannot. Guaranteed payments to partners and draws of money from a business by the owners are not wages. Partners and owners are taxed on net profits, whether or not they draw out the money. They do not withhold taxes from these profits; instead, they make quarterly payments of their estimated taxes on Form 1040-ES. To obtain the Form 1040-ES and instructions, go to www.missouribusiness.net/irs/pdfs/f1040es.pdf.

To withhold federal income tax properly from an employee's wages, employers need the information provided by the employee on form W-4, as well as information contained in the IRS publication, [Circular E, Employer's Tax Guide](#).

Citizenship

Under current federal law, all employees hired after November 6, 1986 must verify authorization to work in the United States. This requirement applies to all employees, including an employee of a corporation.

Employers are required by law to complete the I-9 Employment Eligibility Verification Form on every employee. The form is simple and asks that you review a combination of documents (copy of birth certificate, passport or green card) that verify the employee's identity and right to work. To obtain a copy of the I-9 or for more information about your responsibilities, call the Immigration and Naturalization Service's (INS) National Customer Service Center at (800) 375-5283 or visit their web site at www.uscis.gov/files/form/i-9.pdf

Employee's Withholding Allowance Certificate (W-4)

Each employee must fill out a Form W-4 in order to have proper amounts of income tax withheld. If an employee does not fill out a Form W-4, the employer must withhold taxes as if the employee were single with no allowances. This form can be downloaded at www.missouribusiness.net/irs/pdfs/fw4.pdf

Exemptions determine amounts not taxed on an income tax return. Withholding allowances determine amounts that decrease the tax withheld from wages. Withholding allowances claimed on the Form W-4 can be more or less than exemptions claimed on the tax return. Employers are not required to verify the accuracy of allowances claimed.

Social Security and Medicare Taxes

The Federal Insurance Contributions Act (FICA) provides for a Federal system of old age, survivors, disability, and hospital insurance. Social Security and Medicare taxes are levied on both the employer and employees. The combined rate for both taxes is 15.3 percent.

The employer must withhold and deposit the employee's part of the taxes and pay a matching amount. These taxes have different rates and only social security tax has a wage base limit. The wage base limit is the maximum wage that is subject to the tax for the year. The employee and employer tax rate for social security is 6.2 percent of employee wages (12.4 percent total). The wage base limit for 2003 is \$87,000.

The employee and employer tax rate for Medicare is 1.45 percent (2.9 percent total). There is no wage base limit for Medicare tax; all covered wages are subject to Medicare tax.

For more information on estimating taxes, see IRS Publication 505, "Tax Withholding and Estimated Tax" (www.irs.gov/pub/irs-pdf/p505.pdf).

Unemployment Insurance

Most companies doing business in Missouri are required to pay unemployment insurance to protect their workers during periods of unemployment. The Missouri Division of Employment Security is the state agency responsible for the administration of the unemployment insurance benefit and tax program. The Division has responsibility to both workers and employers. The Division strives to administer the employer tax provisions of the Law equitably in accordance with the intent of the General Assembly of the State of Missouri. An effort is made to tax employers as little as possible while at the same time provide essential benefits to workers.

The reporting requirements of the Federal Unemployment Tax Act (FUTA) are similar to those of Missouri unemployment tax, but are not identical. Federal unemployment tax is administered by the Internal Revenue Service. Contact the IRS for information on your liabilities for federal unemployment tax at www.irs.gov.

The Missouri Division of Employment Security uses the form MODES-2699, Report to Determine Liability Status, to gather information to determine whether an employing unit is liable for state unemployment tax. An entity that employs workers is required to complete and return this form.

To establish liability an employing unit must meet one or more of the following criteria:

1. **General Business Employer**
By having a total payroll of \$1500 or more in a calendar quarter during either the current or preceding calendar year;
By employing a worker for some portion of a day in each of 20 different weeks in either the current or preceding calendar year;
By acquiring and continuing without interruption substantially all the business of another employer (Applies to all types of employers.);
By being liable under the Federal Unemployment Tax Act and employing a worker in Missouri. (Applies also to agricultural and domestic employment.)
2. **Domestic Employer**
An employer of a domestic or household worker in a private home, college sorority or fraternity, becomes liable when \$1,000 or more in cash wages are paid in a calendar quarter during the current or preceding calendar year.
3. **Agricultural Employer**
An agricultural employer who, in all states combined, has 10 or more workers in 20 different weeks or pays \$20,000 or more in cash wages in a calendar quarter, during the current or preceding year, becomes liable to cover workers and pay unemployment taxes.
4. **Nonprofit Organization 501(c)(3)**
A nonprofit organization described in 501(c)(3) of the Internal Revenue Code becomes liable if in Missouri, it employs

four or more workers for some portion of a day in 20 different weeks during the current or preceding calendar year.

5. Government Employer

A governmental entity is liable when it employs a worker regardless of the amount of wages paid or number of weeks workers are employed.

Records

Employers must keep records for at least three (3) calendar years, as well as the current incomplete calendar year. The records must show the following information for each worker:

- Worker's name and social security number
- Dates a worker was hired and separated
- Dates on which a worker performed some services
- The location where services were performed
- The amount of remuneration paid each worker
- The hours of each day in each pay period an individual worked in non-covered employment, and nature of work
- Wages, including commissions, bonuses, prizes and gifts. Also, tips received by a worker from persons other than employer, if such tips are reported to the employer for social security purposes.

Posters

Each employer is required to post and maintain a placard, "Notice to Workers Concerning Unemployment Benefits." This notice should be placed in locations so as to be visible to all workers. Workers who do not have access to the posters should otherwise be notified of their unemployment insurance coverage. The pamphlet, "Information for Workers," should be given to a worker when separated from employment. The posters and pamphlets are available from: www.dolir.mo.gov/posters2.htm.

For more information, see the Employment Security website at www.dolir.mo.gov/es/ui-tax/main.htm or request a copy of the booklet "Employers' Rights and Responsibilities" from the Division of Employment Security, PO Box 59, Jefferson City, MO 65104-0059; (573) 751-3215.

State Requirements

New Hire Reporting

All employers in Missouri must report each newly hired employee to the Department of Revenue within 20 calendar days of hire. Employers may choose the form they use to report new hires. Employers should send a copy of the Form MO W-4 to the Department of Revenue, which can be obtained from www.dor.mo.gov/tax/business/withhold/forms/2006/mow4f.pdf.

Note: The date of hire is defined as the earlier of the date the employee signed the W-4 form, or the first date the employee reports to work, or performs labor or service.

Employers may use one of the following reporting methods:

- Mail the W-4 or equivalent form to the Missouri Department of Revenue, P.O. Box 3340, Jefferson City, Missouri 65105-3340;
- Fax copies to (573) 526-8079; or
- Electronic filing is available at dor.mo.gov/tax/business/withhold/forms

An employer who intentionally fails to submit information on an employee is guilty of an infraction and shall be fined not more than \$25. If the failure to report is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, the fine shall be \$350 for each failure to report or each false or incomplete report.

Withholding Taxes

Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Missouri Employer Tax Identification Number (MO Revenue Form 2643). State tax is then withheld from the employees' payroll and remitted to the Missouri Department of Revenue. For more information contact: Division of Taxation and Collection, P.O. Box 3333, Jefferson City, MO 65105-3333; phone: (573) 751-5752; or visit www.dor.mo.gov/tax/contact.htm.

Employers file income tax withholding returns on form MO 941 (Employer's Report of Income Taxes Withheld). Employers also file an Employer's Annual Reconciliation Report of Income Tax Withheld by January 31 of the year following the reporting year. The form is supplied by the Department of Revenue at: www.dor.mo.gov/tax/business/withhold/forms.

In addition to filing your withholding taxes by mail, the Missouri Department of Revenue offers two alternative methods:

- Telefile - By calling a toll free number you can file your withholding tax return using the Telefile System.
- Electronic Data Interchange (EDI) - EDI offers two options for filing your withholding tax return. The first option allows you to provide return information to your bank. The second option allows you to transmit your return through a value added network to the Department by use of EDI translation software.

The amount of withholding is based on the employee's wages, including reported tips, during the payroll period, marital status, and withholding exemptions. Employers must obtain a MO W-4 (Missouri Employee's Withholding Allowance Certificate) from each employee at the time work begins. Employees who do not complete the form are subject to withholding at

the rate for single persons with no exemptions. Employees are entitled to the same number of personal and dependent exemptions on the state level as they are for federal withholdings.

Employers are required to keep records for all of their employees, including their names, addresses, Social Security numbers, period of employment, and dates and amount of wages subject to withholding.

In addition to state income tax withholdings, some municipalities impose an earnings tax on wages, salaries, or other remuneration of city residents and of nonresidents working in the city.

To register with the Missouri Department of Revenue and receive an employer withholding tax number, request a copy of Form 2643 (same form to obtain a sales tax number and a corporate income tax number). This application is included with the "Missouri Tax Registration Application" available online at www.dor.mo.gov/tax/business/register/forms/2643f.pdf.

The Department of Revenue also produces a publication, "Employer's Tax Guide" that includes instructions and reporting forms. The Guide is available from the Department of Revenue by calling 1-800-877-6881; sending an e-mail request to taxforms@dor.mo.gov or online at www.dor.mo.gov/tax/business/withhold/forms.

Workers' Compensation

Any businesses with five or more employees (except agricultural or domestic labor) must provide workers' compensation insurance to protect their workers in case of job-related injury, illness or death. Construction companies need workers' compensation insurance if they have one or more employees. Companies can offer this protection through a private insurance carrier or they can become self-insurers. Premium rates vary, depending on the risks associated with special occupations. As in most states, the premium rates are determined by an employer's total annual salary. The maximum weekly benefit for temporary total disability, temporary partial disability, permanent total disability and death is currently computed as 105 percent of the state average weekly wage, determined annually on July 1. Missouri's workers' compensation rates compare favorably with those in other states. Though benefits for claimants in other states usually increase automatically from year to year, in Missouri benefits cannot be increased without the review and approval of the state legislature.

In making the decision to enter into a new business venture, workers' compensation liability should be a primary area of concern. Failing to insure your obligations may result in a fine of \$25,000 and/or 1 year of confinement. The article below will provide some basic information regarding workers' compensation. For more information regarding fraud and non-compliance, call (800) 592-6003.

Article

The workers' compensation system is a statutorily created, state administered, no-fault program, which constitutes an injured employee's sole remedy against the employer for work related injuries, thereby protecting the employer from tort liability. The system is not intended to constitute a form of general health insurance. Rather, the system exists for the purpose of compensating employees who are injured, or who contract

occupational diseases, which arise out of and in the course of employment. The law is liberally construed to bring the largest possible class of employers, employees and injuries under its provisions.

There is no limitation as to the kinds of injuries or diseases that might warrant compensation. The term "injury" may include lacerations, contusions, fractures, strains, certain occupational diseases, repetitive motion injuries, some heart attacks and mental injuries, injuries as a result of exposure to fumes or weather, injuries that occur as a result of misbehavior such as intoxication or altercations among employees, as well as sexual assault. With few exemptions, most kinds of businesses are subject to this law. Consider the following questions to better understand coverage principles:

Will my business be subject to the law?

Every employer with five or more employees regularly employed is under the workers' compensation law. The law applies equally to hazardous and non-hazardous employment in businesses operated for profit, corporations, partnerships, joint ventures and sole proprietorships. The only employment exempted, regardless of the number of workers, are farm labor, domestic servants in a private home or occasional labor performed for, and related to, a private household. Those exempted employers with less than five employees may elect to come under the law or may become subject to the law by purchasing workers' compensation insurance. The wisest course is to assume that this law applies to your business.

Every employer under the law must purchase and maintain valid workers' compensation insurance coverage or qualify as a self-insurer, either

individually or as a member of a group. To be self-insured, state approval must be obtained. An employer who has not demonstrated the necessary qualifications and obtained the requisite approval to be self insured is considered to be “bare” regardless of the employer’s actual financial ability to pay claims.

What happens if one of my workers is injured and my business does not have workers’ compensation insurance; nor is it qualified to be a self-insurer?

An injured employee has a right to either pursue the workers’ compensation remedy or to file a civil suit for damages. In the event that the latter course of action is taken, the employer may not interpose defenses such as negligence of a fellow servant or the employee’s contributory fault. If the employee elects to pursue a workers’ compensation claim, the law provides that all compensation shall be immediately computed and payable and the award can then be certified as a judgment and the employer’s assets attached.

What if I decide I do not want to continue workers’ compensation insurance and my business is small enough that I do not have to have coverage?

If an employer, not automatically under the law, chooses to accept the law, that acceptance remains in force until that acceptance is withdrawn through a formal filing with the Division of Workers’ Compensation. Any employer who is eligible to discontinue coverage must notify the state of such action.

Who must the business count as an employee?

Any employee who collects a salary or wages for services performed must be considered an employee. Such term may also include volunteer workers. Partners and sole proprietors are not counted as

employees. If performing actual services for the business, executive officers are considered employees.

It is not necessary that all employees be counted at the same moment in time. Employees employed on a staggered basis, but employed to work on a single project, may be counted to determine whether the business has, or had, five or more employees “regularly employed.”

Can my business avoid being under the law through the use of independent contractors?

The use of contracting as a technique to avoid workers’ compensation exposure is not advised. There is a provision in the law intended to prevent this practice. This provision creates “statutory” or presumptive employment in circumstances where a business contracts to have work performed that would otherwise constitute the normal course of the work for that business. A “statutory employer” becomes liable to provide workers’ compensation benefits to uninsured subcontractors or the employees of uninsured subcontractors. Although this provision primarily affects the construction industry, it applies to all employers with the exception of landowners who are having improvements erected, repaired, altered or demolished. It is significant to note that the term “employee” is very liberally construed under the state workers’ compensation law and the Division would consider many individuals to be employees of a business even though they might be accepted as independent contractors by other agencies.

If my business comes under the law, am I safe from civil suits in the event that an employee is injured?

It is usually the case that, if workers’ compensation jurisdiction applies, the employer cannot be sued under civil law,

either directly or indirectly. However, there are a few exceptions. One exception involves intentional torts such as an assault. Another exception involves the situation where the employer leaves the role of the employer and steps into the role of a co-employee and while working in that capacity causes injury. In such a case, the employer or an individual manager may be subject to suit and the employer's insurance coverage may not apply. Missouri courts have allowed only a few exceptions to the rule of "exclusivity" and the fact of workers' compensation jurisdiction affords the business immunity from a civil judgment for damages on account of a work-related injury.

Every business must be cognizant of workers' compensation liability. No business can avoid exposure to the costs of work-related injury and even those businesses that are sufficiently small not to come under the law, should seriously consider electing workers' compensation coverage since liability for work-related injury or disease exists even in the absence of workers' compensation jurisdiction.

The information in this the article above is attributed to James B. Kennedy, appeared in the St. Louis Business Journal and is included with their permission.

You can obtain further information from the Missouri Division of Workers' Compensation at (888) 837-6069; by consulting with your attorney or insurance representative; or by visiting www.dolir.mo.gov/wc/.

Occupational Safety and Health Act (OSHA)

All employers must furnish to employees employment and a place of employment free from recognized hazards that are causing or are

likely to cause death or serious harm to employees. Employers must comply with occupational safety and health standards issued under the Act.

Employees must comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to their own actions and conduct on the job.

The Act requires that a representative of the employer and a representative authorized by the employees be given an opportunity to accompany the OSHA inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the OSHA Compliance Officer must consult with a reasonable number of employees concerning safety and health conditions in the workplace.

Employees or their representatives have the right to file a complaint with the nearest OSHA office requesting an inspection. If they believe unsafe or unhealthful conditions exist in their workplace, OSHA will withhold, on request, names of employees complaining. The Act provides that employees must not be discharged or discriminated against in any way for filing safety and health complaints or for otherwise exercising their rights under the Act.

If upon inspection OSHA believes an employer has violated the Act, a citation alleging such violations will be issued to the employer. Each citation will specify a time period within which the alleged violation must be corrected. The OSHA citation must be prominently displayed at or near the place of alleged violation for three days, or until it is corrected, whichever is later, to warn employees of dangers that may exist there.

The Act provides for mandatory civil penalties against employers of up to \$7,000 for each serious violation and for optional penalties of up to \$7,000 for each non-serious violation. Penalties of up to \$7,000 per day may be proposed for failure to correct violations within the proposed time period and for each day the

violation continues beyond the prescribed abatement date.

Free assistance in identifying and correcting hazards and in improving safety and health management is available to employers, without citation or penalty, through OSHA-supported programs in each State. Contact the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, 3315 West Truman Blvd., P.O. Box 449, Jefferson City, MO., 65102; phone: (573) 751-3403 or 1-800-475-2130, web site: www.dolir.mo.gov/ls/index.asp.

Additional information and copies of the Act, specific OSHA safety and health standards and other applicable regulations may be obtained from the OSHA regional office in Kansas City, MO at (816) 426-5861 or visit their website at: www.osha.gov.

If you are a small business subject to OSHA regulations, the OSHA Small Business Handbook will give your business the information it needs to comply with federal occupational safety and health law. You can access this information online at: www.osha.gov/Publications/smallbusiness/small-business.html.

To order OSHA publications over the telephone, call (800) 321-6742.

Other Helpful Assistance and Information

Internal Revenue Service (IRS) Assistance and Publications

The IRS (www.irs.gov) provides a great deal of helpful information and assistance to the small business owner. Forms and publications can be obtained from: www.irs.gov/formspubs

You can retrieve:

- a variety of forms
- IRS publications
- newsletters
- tax information for business

The section on “Employment Taxes for Small Business” (www.irs.gov/businesses/small/content/0,,id=98942,00.html) is especially helpful with respect to employee issues.

The “IRS Small Business Resource Guide” found at www.missouribusiness.net/irs/ also offers easy to understand information important to small businesses and is updated annually with new forms, instructions and publications.

You can obtain a copy of [Circular E, Employer’s Tax Guide](#) from your local IRS office or call (800) 829-3676. Circular E explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee’s paycheck.

Assistance to Employers

The Missouri Department of Labor and Industrial Relations offers other assistance to employers and employees. The network of workforce development offices provides a complete labor exchange that includes a computerized job bank, applicant recruitment, selection and referral, labor market information, latest placement methods, testing and other assisted services. GreatHires.org! (www.greathires.org) provides current information pertaining to employment opportunities in Missouri as well as information on labor, employment, education/training, labor market information, and other programs and services related to employment and training.