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Workers' Compensation Information for Contractors and Subcontractors

Virginia Coverage Requirements

Virginia law requires that an employer who regularly employs three or more part-time or full-time employees to carry workers' compensation. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract of the business, the subcontractor's employees are included in determining the total number of employees.

Employee is broadly defined in workers' compensation. A corporate officer is an employee. "Employee" also includes part-time, full-time and seasonal workers, minors, aliens and working family members.

Contractor Liability

The legal requirement that a contractor bears potential workers' compensation liability for a subcontractor's employees is from the Statutory Employer law, § 65.2-302. This requirement applies to subcontractors that perform the same trade, business or occupation as the contractor or to fulfill a contract obligation of the contractor. Example: A homebuilding contractor that subcontracts the house electrical must count the employees of the electrical subcontractor because a house requires electrical.

A simple mathematical guide for determining whether a contractor is required to have coverage is for the contractor to add the sum total of all direct employees (the contractor's employees) plus all indirect employees (the subcontractor's employees). If the contractor has one employee and hires two subcontractors, each with one employee each, the math would look like this:

Contractor	→ hires	Subcontractor 1	and	Subcontractor 2	
(homebuilder)		(electrician)		(plumber)	
with		with		with	
1 employee	+	1 employee	+	1 employee	= 3 employees

The contractor above would be required to have coverage under the law. Contractor liability does not extend to the individual subcontractors or to sole proprietors with no employees, only to subcontractor's employees. The contractor is required to have coverage even if one or all of the subcontractors have their own coverage. The contractor should gather and maintain proof of coverage for all subcontractors that it hires and it should not be charged premium for those with coverage.

Voluntary Coverage

Since a potential statutory employer relationship exists for any job done through subcontractors, some contractors will require that all subcontractors that they work with carry their own coverage, even sole proprietors and other subcontractors that are not required by law to carry coverage. This is because the contractor can be charged additional premium if the subcontractor's coverage is not present. Coverage is available to a business voluntarily, even when it is not required by law.