



Certified Independent Contractor Status – Why LB 276 Is Needed In Nebraska

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Background: The contractor/subcontractor relationship is prevalent in multiple industries and especially in the construction industry. **While independent contractors or independent subcontractors are a recognized business model, they are not recognized or defined in the Nebraska Workers Compensation Act.** The Nebraska Workers Compensation Court has determined that “employers are not required to provide coverage for independent contractors”, however - unlike certain classes of employees - independent contractors are not defined in statute as being exempt from the Act.

The primary complication comes into play when an independent contractor is uninsured for workers compensation and is injured on the job site of the hiring general contractor/agent, but makes a claim against the hiring general contractor/agent anyway. The Workers Compensation Court applies an arbitrary test to decide whether or not at the time of injury, the uninsured independent contractor was really a “statutory employee” of the hiring general contractor/agent - regardless of their contractual relationship, or any written statement by the independent contractor - and those deemed by the court to be “employees” are granted workers compensation benefits.

The Problem : Not only can a hiring general contractor/agent (and its insurance carrier) be held responsible to pay for any work related injuries, but is also subject to paying often substantial additional insurance premium – retroactively - for uninsured contractors on its workers compensation policy annual audits.

The Solution: LB 276 will require an independent contractor to either purchase workers compensation insurance for him/herself, or be legally certified as an independent contractor and waive all benefits under the Workers Compensation Act. A certified independent contractor could at any time, elect to be brought back under the Act by obtaining worker compensation insurance. **Creating the Certified Independent Contractor status will add clarity and reduce ambiguity in the law, and help resolve issues that have plagued contractors and insurance carriers alike.**