

CHANGES TO FLORIDA'S WORKERS' COMPENSATION LAW IMPACT THE CONSTRUCTION INDUSTRY

The Florida Legislature recently passed Senate Bill 50-A (approved by the Governor on July 15, 2003), which dramatically changed, and will continue to change, Florida's Workers' Compensation law. While the revisions to the law include changes to benefits, affordability and availability, dispute resolution, and attorney's fees, changes relating to exemptions and enforcement are sending shock waves through Florida's construction industry. The changes limit available exemptions and increase the State's enforcement power. Many of the changes specifically target, and significantly impact, the construction industry.

Prior to the changes instituted by Senate Bill 50-A, partners, sole proprietors, independent contractors, and officers of corporations engaged in the construction industry could elect to be exempted from workers' compensation coverage. The availability of exemptions promoted a system whereby many construction workers were classified as independent contractors to avoid the high price of workers' compensation insurance. Since these exemptions are either no longer available or have been substantially limited, almost all construction workers must now be provided workers' compensation coverage. As a result, the cost of construction will increase.

The modifications to the exemptions, which take effect on January 1, 2004, abolish almost all of the exemptions for individuals working on construction projects. The definition of "employee" which once excluded part-

ners, sole proprietors, independent contractors, and corporate officers, will now specifically include them, as well as all workers in the construction industry (with the exception of a very limited class of corporate officers). While independent contractors may still be exempt from the Workers' Compensation law generally, "independent contractor" status, after the revisions, applies only to individuals NOT engaged in the construction industry.

The revisions will also limit corporate officers' ability to elect exemption from coverage. Prior to the revisions, no more than three officers of a corporation actively engaged in the construction industry could elect exemption. The January 1, 2004 revisions do not change the number of corporate officers that may claim exemption, but change the definition of corporate officers to only those owning at least 10% of the corporation's stock and listed as officers with the Division of Corporations of the Florida Department of State.

For enforcement purposes, the State may conduct investigations to ensure compliance by entering and inspecting a place of business (or construction project) at any reasonable time in order to determine compliance, examining and copying business records, and issuing and serving subpoenas for the attendance of witnesses or production of documents and records. Employers may be fined up to \$5,000 per employee improperly classified as an independent contractor. Upon the finding of a violation, the State may issue and enforce stop

work orders and seek injunctions.

The revisions to Florida's Workers' Compensation law will create a new set of challenges for the construction industry beyond the added cost of providing coverage for previously exempt workers. Enhanced enforcement will certainly result in increased attention to the large illegal immigrant portion of the labor force in the construction industry and may ultimately result in a smaller pool of available workers. ❖

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