

MAE News – Special Producer Edition

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

2019

Special Edition



John C. Rohde
Executive Director/Chair
Maine Workers'
Compensation Board

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Insurance Coverage Unit

**Independent Contractor
Status Predetermination**

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Independent Contractors and Predeterminations

What You Need to Know

- Independent contractors are workers who perform services for remuneration under a verbal or written contract, but who are not under the essential control or superintendence of another person, both under the person's contract of service and in fact. The worker must also meet specific criteria.
- In order for a person to be an independent contractor they must meet the test in §102(13-A) of the Workers' Compensation Act.
- An independent contractor is not required to have workers' compensation insurance; however an independent contractor is required to have workers' compensation insurance for any employees hired by the independent contractor.
- Anyone may request the Board make a "predetermination" of their employment status; that is whether they likely are or are not an independent contractor for purposes of maintaining mandatory workers' compensation insurance and/or responsible for claims by injured workers.
- **THE PREDETERMINATION PROCESS IS VOLUNTARY. THE WORKERS' COMPENSATION ACT DOES NOT REQUIRE AN INDIVIDUAL TO RECEIVE AN APPROVED PREDETERMINATION BEFORE WORKING AS AN INDEPENDENT CONTRACTOR.**
- A worker who performs services for remuneration is presumed to be an employee for purposes of workers' compensation unless the employing unit proves the worker is an independent contractor.
- Predeterminations (except for landowners who hire wood harvesters) are "rebuttable." This means the Board can still find the person is an employee in a later proceeding before the Board. A written contract or verbal agreement that a worker is an independent contractor will be considered but does not control a final decision by the Board.
- **Applications for predetermination of independent contractor status ([WCB-266](#)) must be submitted by mail or fax (email not accepted).** Applications may also be dropped off, but will not be processed the same day.
- **The independent contractor is the person responsible to provide copies of the approved certificate; do not contact the Board for a copy.**

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Insurance Coverage Unit

**Waivers from Workers'
Compensation Insurance**

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Insurance Exclusions

What You Need to Know

- Sole proprietors, owners of a partnership, and members of a limited liability company do not need to carry a workers' compensation insurance policy on themselves and do not have to file a waiver.
- Waivers may be obtained for parents, spouses, domestic partners and children of sole proprietors, owners of a partnership, and members of a limited liability company. These waivers must be submitted to the board for review and approval.
- Sole proprietors, owners of a partnership, and members of a limited liability company may elect to be covered in their application for a workers' compensation insurance policy.
- A corporate owner must own 20% or more of the outstanding voting stock to be eligible to waive workers' compensation insurance coverage. When applying for a waiver, a corporate owner must indicate the actual number (not a percentage) of both the voting stock issued by the corporation and the stock held by the owner.
- The parent, spouse, domestic partner or child of a corporate owner who owns 20% or more of the outstanding voting stock may not waive coverage unless the person under whom they are claiming the right to waive has also waived his/her right to coverage.
- An executive officer of a private corporation is considered an employee under the Workers' Compensation Act and must be covered under a workers' compensation insurance policy unless that person is also an owner who owns 20% or more of the outstanding voting stock, has applied for, and received a waiver from the Board.
- Executive officers of charitable, religious, educational or other nonprofit corporations are not required to be covered under the Workers' Compensation Act. A charitable, religious, educational or other nonprofit corporation may elect to have one or more of its executive officers considered an employee by securing workers' compensation insurance for that person.
- Applications for a waiver of workers' compensation insurance ([WCB-2C](#)) must be completed in accordance with the form instructions and are not valid until approved by the Board.