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# Employers are required to provide workers' compensation coverage

## Minnesota state law allows for some limited exceptions to the requirement

### General rules

All Minnesota employers, with very limited exceptions, are subject to the Minnesota Workers' Compensation Act and are required either to purchase workers' compensation insurance or to obtain the Minnesota Commerce Department's approval to self-insure.

Under the Act, the term "employer" means any person who employs another to perform services for hire and includes a corporation, limited liability company, partnership, sole proprietorship, association, group of persons, the state and any governmental subdivision, including counties, cities, towns and school districts. Any such employer who has one or more employees is subject to the workers' compensation law.

Employees are generally defined as persons performing services for another, including minors and undocumented aliens. There is no minimum number of employees an employer must have before coverage is required: An employer with only one part-time employee generally must provide coverage.

There are some very limited, but notable, exceptions to these rules.

### Exceptions

#### Family businesses

Small business owners and certain family members who work for them are exempt from workers' compensation coverage requirements. For example, a sole

proprietor is not required to obtain coverage for himself or for his spouse, parents or children, but is required to secure coverage for any other employees. Similarly, a partnership is not required to provide coverage for its partners or for any partner's spouse, parent or child who is employed by the partnership.

Executive officers of closely held corporations and managers of limited liability companies are also excluded from coverage if certain conditions are met with respect to size of payroll and ownership interest. If the conditions are met, the officer's/manager's spouse, parents and children are also automatically excluded from mandatory coverage and other close relatives (within the third degree of kinship under civil law) may be excluded by filing a written election with the Minnesota Department of Labor and Industry.

Any employer having employees who are automatically excluded from coverage under these rules may elect coverage for any or all of its exempt employees by providing written notice to its insurer of such election. For more information regarding small business owners, see the SFM *Legal Advisory*, "Small business owner exemptions."

#### Family farms

Farm owners are not required to maintain workers' compensation coverage for farm laborers if the farm paid less than \$8,000 in cash wages during the preceding calendar year, or paid less than the statewide average annual wage (\$39,550 in 2004) and maintains total liability and medical payment coverage equal to



\$300,000 and \$5,000, respectively, under a farm liability insurance policy which covers injuries to farm laborers.

The term “farm laborer” does not include any spouse, parent or child of the farmer employed by the farmer. These family members are automatically excluded from coverage.

## **Nonprofit clubs, associations and organizations**

A nonprofit organization, regardless of its purpose or cause, is subject to the workers’ compensation laws and must maintain workers’ compensation insurance if it pays more than \$1,000 in salaries or wages in any year. No nonprofit organizations are excepted from this requirement.

## **Nannies, caretakers and other household workers**

Many parents hire nannies to care for their children, and adult children often retain caretakers for elderly parents. Under Minnesota workers’ compensation law, an independent household worker who performs nanny,

caretaker, cleaning or other services in a private home is a covered employee if he or she has earned \$1,000 or more from a single household in a three-month period during the previous year regardless whether he or she has earned \$1,000 in the current quarter.

Any household paying the worker \$1,000 or more during any quarter is therefore responsible for providing workers’ compensation coverage for the household worker.

There are some federal and state exemptions for nanny or babysitting services provided by foreign student exchange programs where the student provides babysitting services in exchange for room and board.

## **Independent contractors**

Minnesota’s workers’ compensation law excludes independent contractors from coverage. The Minnesota Department of Labor and Industry has issued detailed rules to help employers determine whether a particular worker is exempted as an independent contractor, and there are special, more stringent statutory provisions with respect to independent contractors in the construction business.

Generally, the most important factor in determining whether a worker is an independent contractor is the amount of control the employer exerts over the manner and method by which the contractor performs his or her work. Employers should never assume that someone who represents himself as an independent contractor is



not an employee for purposes of workers' compensation coverage. Employers should review the rules governing the contractor's line of work in every case.

For more information regarding independent contractors in the construction business, see the SFM *Legal Advisory*, "Special liability of general contractors," and the SFM *CompTalk*, "Hiring subcontractors."

## Casual employees

Another category of worker not entitled to workers' compensation benefits is the casual employee. For this exception to apply, the employment relationship must be (i) casual and (ii) not in the usual course of the employer's trade, business or occupation.

Courts have interpreted "casual" to mean work that is not performed on a regular basis and that is not permanent or continuous. For example, a man who was a property manager for a circus for one week during the year was deemed a casual employee. This exception *rarely* applies and should not be relied upon by an employer without the advice of counsel.

## Penalties

### Failing to obtain required coverage

An uninsured employer may be fined by the Department of Labor and Industry for failing to insure employees, regardless whether an injury has occurred.

The department may order the employer to provide the mandatory insurance coverage, to refrain from employing any person at any time without insuring the employee and to pay a penalty of up to \$1,000 per employee for each week the required insurance has not been in place.

### Other consequences of failing to insure

If an employee sustains a work-related injury and the employer has neither purchased insurance coverage nor qualified for self-insurance, the employee is entitled to have the state Special Compensation Fund pay his or her workers' compensation benefits. The Fund will then pursue reimbursement of all benefits from the uninsured employer along with a penalty in the amount of 65 percent of the amount of these benefits.

Alternatively, the employee may elect to sue the uninsured employer in a civil action for the full extent of the employee's losses. The amount awarded in such a case will usually be substantially higher than the workers' compensation benefits due. Moreover, the employer is precluded from claiming any common law defenses—e.g., contributory negligence or assumption of risk—in defending itself in the action.

If you have any questions about the issues addressed in this Legal Advisory, please call Lynn, Scharfenberg & Hollick at (952) 838-4450.