

Prepared by SFM's in-house legal firm, Lynn Scharfenberg & Associates

Small business owner exemptions

All Minnesota employers and employees are subject to the Minnesota Workers' Compensation Act (the "Act"), except those specifically excluded by statute. Minn. Stat. §176.041 lists and describes the types of employees who are exempt from mandatory insurance coverage under the Act. Generally, these exemptions apply to the "owners" of small businesses and their close relatives who work in the family business.

Sole proprietorships and partnerships

For example, someone operating a restaurant or other business as a sole proprietor is not required to obtain workers' compensation insurance for herself or for her spouse, parents or children (regardless of age or wage rate) working in the restaurant or other business. She would, however, be required to provide coverage for any other employees of the restaurant. Similarly, a business operating as a partnership (a law firm or accounting practice, for instance) is not required to provide workers' compensation coverage for any of its partners or for any partner's spouse, parent or child who is employed by the partnership.

Executive officers of closely held corporations

An executive officer of a closely held corporation is excluded from coverage under the Act if four conditions are met: (i) the corporation qualifies as "closely held," (ii) the total number of payroll hours is within the statutory guidelines, (iii) the individual qualifies as an "executive officer," and (iv) the officer owns the required amount of corporate stock.

The Act defines "closely held corporation" as a corporation in which the capital stock is held by no more than ten (10) persons. This determination is to be made annually on the effective date of insurance coverage or the approval of self-insured status.

The corporation must have had less than 22,880 hours of payroll in the preceding calendar year. The term "calendar year" has been interpreted to mean January 1 to December 31 and not merely the previous 12-month period.

Minn. Stat. §176.011(11) defines "executive officer" as any officer of the corporation elected or appointed in accordance with its charter or bylaws. This reference would generally include the chief executive officer, chief financial officer, president, vice president(s), treasurer and corporate secretary.

The officer must own at least 25 percent of the capital stock of the corporation, exclusive of any stock owned by other family members.

Managers of limited liability companies

The limited liability company ("LLC") is a relatively new form of business entity in Minnesota, having some attributes of a corporation and others of a partnership. A manager of an LLC (much like an executive officer of a closely held corporation) who owns at least a 25 percent membership interest therein is excluded from mandatory coverage under the Act if the LLC has ten (10) or fewer members (i.e., owners) and has less than 22,880 hours of payroll in the preceding calendar year. This exemption is very similar to the exemption for executive officers of closely held corporations. Under either of the exemptions, if any of the statutory conditions ceases to be met, the exemption is lost effective as of the employer's next renewal date.

Immediate family members; close relatives

Where the executive officer of a closely held corporation or the manager of an LLC is statutorily excluded from mandatory coverage under the Act, the spouse, parents and children (regardless of age or wage rate) of

such executive officer or manager are also automatically excluded from mandatory coverage under the Act if they work in the same business. Moreover, other close relatives, by either blood or marriage, may also be excluded. These relatives must be within the third degree of kinship under the rules of civil law. The employer must file a written election to exclude them from coverage with the Minnesota Department of Labor and Industry; otherwise, they will be deemed to be covered by the Act. Please note, however, that this option to exclude certain close relatives by written notice does not apply to sole proprietors or partnerships.

Election of coverage

Employers of individuals (like sole proprietors, partners, executive officers of closed corporations, etc.) who are automatically excluded from mandatory cover-

age under the Act may, nevertheless, elect to provide coverage for such persons. See Minn. Stat. §176.041(1)(a). This coverage may be elected for some individuals while others continue to be excluded.

To make an election, the employer must notify its workers' compensation insurer in writing of its intent to elect coverage, specifying the individuals to be covered. Coverage is then effective the day following receipt of the notice. This election remains in effect as long as the policy, or renewal policy by the same insurer, remains in effect. Once an election of coverage has been made, it can only be terminated by a similar written notice to the insurer.

If you have any questions about the issues addressed in this *Legal Advisory*, please call Lynn, Scharfenberg & Associates at (952) 838-4450 or (800) 937-1181, option 7.