

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1137
(Representative Keiser)

AN ACT to create and enact sections 65-04-26.2 and 65-04-27.2 of the North Dakota Century Code, relating to workers' compensation requirements for general contractors and cease and desist orders; to amend and reenact subsection 16 of section 65-01-02 and section 65-04-19 of the North Dakota Century Code, relating to the workers' compensation definition of employee, assignment of rate classification, and calculation of premium; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 16 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

16. "Employee" means ~~a person~~an individual who performs hazardous employment for another for remuneration unless the ~~person~~individual is an independent contractor under the common-law test.
 - a. The term includes:
 - (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of ~~the several counties of this state~~any county, and all elective peace officers of any city.
 - (2) Aliens.
 - (3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
 - (4) Minors, whether lawfully or unlawfully employed; ~~a.~~ A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.
 - b. The term does not include:
 - (1) ~~Any person~~An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that ~~person's~~individual's employer.
 - (2) ~~Any person~~An individual who is engaged in an illegal enterprise or occupation.
 - (3) The spouse of an employer or ~~a~~the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (4) ~~Any~~A real estate broker or real estate salesperson, provided the ~~person~~individual meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

- (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person ~~or firm~~ for ~~whom~~which the salesperson or broker works, which agreement must provide ~~that~~ the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) ~~Any~~An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states ~~that~~ the individual is an independent contractor.
- (7) An employer.
- e. ~~Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.~~

SECTION 2. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - Mailing of premium billing statement as notice of amount due.

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information that an employer is subject to the title.
3. If the organization does not receive the annual payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium using the wage cap in effect per employee reported in the previous payroll report, using information obtained through the organization's investigative process, or using data obtained from job service North Dakota.
4. The organization shall order the premium to be paid into the fund and shall mail a copy of the premium billing statement to the employer. Mailing of the premium billing statement constitutes notice to the employer of the amount due.

SECTION 3. Section 65-04-26.2 of the North Dakota Century Code is created and enacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor if the subcontractor or independent contractor does not secure coverage as required under this title. A general contractor is liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage. The general contractor is liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
3. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage arises from a single project with a general contractor, the liability of the general contractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of the the general contractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.
4. The definition of the term "contractor" under section 43-07-01 applies to this section.

SECTION 4. Section 65-04-27.2 of the North Dakota Century Code is created and enacted as follows:

65-04-27.2. Cease and desist order - Civil penalty.

1. If it appears to the organization an employer is without workers compensation coverage or is in an uninsured status in violation of this title, by registered mail the director may issue to the employer an order to cease and desist and a notice of opportunity for hearing. Within thirty days of receipt of the order, a party to the order may make a written request for a hearing. If a hearing is not requested, the order is final and may not be appealed. If a hearing is requested, the hearing must be conducted in accordance with chapter 28-32 to the extent that chapter does not conflict with this section and the order remains in effect until the hearing officer renders a decision. If an employer fails to appear at a hearing requested under this section, that employer defaults and the allegations contained in the cease and desist order are deemed true.
2. In addition to the penalties in section 65-04-33, a person that employs an individual in violation of a cease and desist order issued under this section is subject to a penalty of ten thousand dollars and to a penalty of one hundred dollars per day for each day the violation continues. The organization may reduce the penalties under this section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1137.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State