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Workers' Compensation: No Longer for Employees Only

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If your construction business is located in New Hampshire, a little known change in the law this past legislative session may result in an increase in your workers' compensation insurance premiums.

This spring, the New Hampshire legislature enacted HB 471 (now Chapter 323 of the laws of 2007), which among other things, amended the limited executive exclusion found in the workers' compensation law for corporations and limited liability companies that are engaged in the private construction industry in New Hampshire. This change was effective as of September 14, 2007, for new and renewed workers' compensation insurance policies.

The change in law outlined in this article was part of a more comprehensive change in workers' compensation law that now requires workers' compensation coverage for any type or size of business on state transportation and public works projects in New Hampshire.

The law before September 14, 2007

Under the old law and prior to September 14, if your business was subject to the workers' compensation law (that is, having more than three executives and/or other employees), you could elect to exclude up to three corporate executives or LLC managers from coverage under your workers' compensation policy; thereby, eliminating their payroll in the development of the premium. And if your construction business was not required to carry workers' compensation coverage by virtue of it not having any employees and your business had three or fewer corporate officers or LLC members, the old law did not require coverage.

Each of these scenarios has changed with the passage of HB 471/Chapter Law 323 in the last legislative session.

The law on and after September 14, 2007

The new law, as changed through HB 471/Chapter Law 323, 2007, *revokes* the election to exclude up to three of these executives when they are "actively engaged in on-site work to advance the goal of a construction project at a construction site within the State of New Hampshire." And it no longer matters whether the corporation or LLC has any employees. If they are involved in construction, they are deemed to be an "employer" and subject to workers' compensation coverage.

This article is intended to serve as a summary of the issues outlined herein. While it may include some general guidance, it is not intended as, nor is it a substitute for, legal advice. Your receipt of

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