

## **IMPORTANT NOTICE NEW WORKERS COMP LAW/APPLICATION FOR PREDETERMINATION – Annual Reminder**

Please read this NOTICE carefully as it may affect your ability to use independent contractors and the premium you will pay for them.

The law passed in January 2010 holds that any person you use to perform construction work on a construction site is presumed to be your employee unless the person meets all 12 parts of a new definition of independent contractor. A copy of the 12 part test appears on the reverse.

While the law changes the definition of independent contractor, it does not appear the insurance carriers will change their policy regarding how premium is charged for independent contractors. Insurance companies will charge premium on those workers you consider to be “independent contractors” unless you produce evidence that (1) the contractor has workers’ compensation coverage in force on all workers – including owners and/or officers working on the site for the duration of their work, as demonstrated by a workers’ compensation certificate of insurance, or (2) the Workers’ Compensation Board issued an approved **Predetermination of Independent Contractor Status** in the name of the policyholder and contractor. NOTE: The Workers’ Compensation Board does not approve Predetermination requests retroactively. In order to avoid premium charges for these contractors, you must have the Predetermination letters approved as of the date the contractor begins work for you.

### **In addition, the law:**

Eliminates “opt-out” provisions, so a working subcontractor can’t avoid covering himself or working family members under workers’ compensation by incorporating or forming a partnership or limited liability company or professional corporation.

Defines “construction work” as any part of the construction, alteration or remodeling of a structure, including related landscaping and other site work performed in connection with the performance of such work, but not including surveying, engineering, examination or inspection of a construction site or the delivery of materials to a construction site.

Defines “construction site” as “a location where a structure that is attached or will be attached to real property is constructed , altered or remodeled.”

**You may download a copy of the updated form (WCB-264) at the website:  
[www.maine.gov/wcb/departments/board.htm](http://www.maine.gov/wcb/departments/board.htm).**

The information contained above is a brief summary of the law and is not all inclusive. If you have questions regarding this alert or the new law you should contact one of our offices you normally do business with. Workers Compensation Board, or your legal representative.

**J.EDWARD KNIGHT & CO.**

A “**construction subcontractor**” is defined as a person who performs construction work on a construction site for a hiring agent if the person satisfies all of the following criteria:

1. Possess or has applied for a federal employer identification number or SSN or agreed in writing to carry out the responsibilities imposed on employers under this chapter;
2. Has control and discretion over the means and manner of performance of the construction work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the hiring agent;
3. Has control over the time when the work is performed and the time of performance is not dictated by the hiring agent. This allows agreements as to completion schedules, range of work hours and maximum work hours the applicant is to provide;
4. Hires and pays the person’s assistants, and if employees, supervise the details of their work;
5. Be in business for him/herself;
6. Has continuing or recurring construction business liabilities or obligations;
7. Success or failure of the person’s business depends on the relationship of business receipts to expenditures;
8. Receives compensation for construction work or services performed, and remuneration is not determined unilaterally by the hiring agent;
9. Is responsible in the first instance for the main expenses related to the service or construction work performed (a hiring agent may provide supplies or materials necessary to the work);
10. Is responsible for satisfactory completion of the work and may be contractually responsible for failure to complete the work;
11. Supplies the principal tools and instruments used in the work (hiring agents may supply tools or instruments unique to their special requirements or which are located on their premises); and
12. Is not required to work exclusively for the hiring agent.