

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS & BROKERS OF LOUISIANA

TA 333

May 1, 2018

SUBJECT: WORKERS' COMPENSATION: Who is excluded from coverage under the Louisiana Workers' Compensation Act?

BACKGROUND: A frequent question arises regarding what classifications of workers are excluded from the Louisiana Workers' Compensation Act. The answer may be found in the plain language of the statute. The answer may require a deeper analysis of the relationship between the business and the worker to determine whether an individual should be classified as an employee or independent contractor (see TA 327). An additional analysis is then required to determine if the independent contractor is performing manual labor. In the case of work performed on or at a personal residence, the answer may require an analysis of the homeowner (see TA 114).

MAIN POINTS: The Louisiana Workers' Compensation Act lists several occupations that are specifically excluded from coverage under the Act. In addition, there are individuals that can elect to exclude themselves from the Act by written agreement. Finally, independent contractors, not involved in manual labor, are excluded from the Act.

STATUTORY EXCLUSIONS

Real estate brokers and salespeople

A real estate broker, or real estate salesperson, operating under the auspices of a licensed broker in the State of Louisiana who is working in the course and scope of the real estate business, is exempt from coverage under the Act - La. R.S. 23:1047.

Musicians

Musicians and performers who are rendering services pursuant to a performance contract are exempt from coverage under the Act - La. R.S. 23:1035(B)(2).

Landmen

Any landman, that is operating under the auspices of an independent or lead broker in the State of Louisiana, who is engaged primarily in the negotiations for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration or development of minerals is exempt from coverage under the Act - La. R.S. 23:1048.

Executive officers of non-profits

Executive officers of all charitable, religious, educational and other non-profit corporations are exempt from coverage under the Act - La. R.S. 23:1044.

Other uncompensated officers and board members of non-profits

Uncompensated officers and board members of bona fide, nonprofit veterans groups and nonprofit groups that are charitable, educational, religious, social, civic, or fraternal in nature, including the YMCA, YWCA and scouting organizations, are exempt from coverage under the Act – La. R.S. 23:1046.

Crop dusters

Members of the crew of an airplane engaged in dusting or spraying operations of a farm are exempt from coverage as to insurance for that farm – La. R.S. 23:1045(A). However, a business in the business of using aircraft to spray farms, must cover its employees and contractors – La. R.S. 23:1045(B). So the question for the business owner is what kind of business do you have; if they are running a spraying operation and not a farm, they need workers' compensation coverage on their workers.

Employees covered under Federal laws

Any employee covered by the Federal Employer's Liability Act, Longshore and Harbor Worker Compensation Act, or Jones Act is exempt from coverage under the Louisiana Workers' Compensation Act – La. R.S. 23:1035.2.

Interstate railroad

Any employees of employers engaged in interstate or foreign commerce by railroad are exempt from the Act – La. R.S. 23:1037

Owner operators

An owner operator who signs a written agreement to provide trucking transportation services with a common carrier, contract carrier or exempt hauler, and the written agreement specifically identifies the owner operator to be an independent contractor, is exempt from the Act – La. R.S. 23:1021(10). An individual driver in a purchase/lease back agreement with a carrier or hauler is not an owner operator by law.

Public officers

Any state, district, parish or municipal officer, elective or appointive, and any board or commission member, elective or appointive, when the position or the office is established by the Constitution or laws of Louisiana, is exempt from coverage – La. R.S. 23:1034. Sheriff's deputies are excluded from the Act under this provision. Police officers are not excluded from the Act under this provision. The political subdivision can opt to provide workers' compensation for the officials and in doing so gains the exclusive remedy provisions of the Act.

Household employees

An employee of a private residential householder is exempt from coverage under the Act – La. R.S. 23:1035(B)(1). For full analysis, see TA 114.

Temporary employees of small unincorporated farms

Any employee of a private unincorporated farm, in connection with cultivating the soil, raising or harvesting any agricultural commodity including livestock, when the employee's annual net earnings is less than \$1000 and the total net earnings of all employees of the farm are less than \$2500 – La. R.S. 23:1035(B)(1).

EXEMPTION BY WRITTEN AGREEMENT

The bona fide president, the vice-president, the secretary or the treasurer of a corporation, who owns not less than ten percent of the stock of the corporation, can elect by written agreement to be excluded from the Louisiana Workers' Compensation Act. Likewise, a partner with respect to the partnership employing him, a member of a limited liability corporation with ten percent membership, and a sole proprietor can all elect by written agreement to be excluded from the Act. The written agreement is between the individual and the insurance company providing coverage to the business entity. Once the agreement is made effective, the wages and compensation of the individual are not included in the premium rate for workers' compensation insurance for the business entity.

INDEPENDENT CONTRACTORS NOT INVOLVED IN MANUAL LABOR ARE EXEMPT

The issue of employee versus independent contractor is thoroughly examined in TA 327. The Louisiana Workforce Commission tool to evaluate a specific relationship is still active and can be found at the following link: <http://www.laworks.net/UnemploymentInsurance/MisclassEmployer.asp>

The Workers' Compensation Act holds that true independent contractors are excluded from the Act unless the independent contractor spends a substantial period of his time engaged in manual labor. If the independent contractor spends a substantial period of his time engaged in manual labor, then he is specifically covered by the Act and insurance coverage must be provided for his work.

Driving a truck is not manual labor

Independent contractors who drive a truck tractor (with or without a trailer) are exempt if their sole duties are fueling, driving, connecting and disconnecting electrical lines and air hoses, hooking and unhooking trailers and performing vehicle inspections. If the driver performs any other tasks, then those tasks may be considered manual labor and the driver would be covered by the Louisiana Workers' Compensation Act.

FINAL THOUGHTS:

Generally, any person performing service that is part of the trade, business or occupation of a business, will be covered under the Louisiana Workers' Compensation Act. The above categories represent specific exceptions to the overall rules of coverage.

Volunteers are not covered under the Act as they are neither employees nor independent contractors – they do not meet any definition for coverage.

Undocumented workers are covered under the Act unless they meet one of the specific exemptions contained herein. Lack of legal status to work in the United States is not a bar to the receipt of Louisiana workers' compensation benefits.

**NECESSARY
ACTION:**

Distribute this Technical Advisory to appropriate staff.

**SPECIAL
NOTE:**

IIABL wishes to express its appreciation to LWCC and their in-house firm of Johnson, Rahman and Thomas for drafting this Technical Advisory. LWCC volunteered its legal staff to address this issue and for that we are grateful. As with all of the IIABL technical advisories, this information is provided for information purposes only and should not be relied upon as legal advice. Please contact legal counsel if you have specific questions regarding a specific customer.