

CHANGES MADE TO WORKERS COMPENSATION STATUTES THAT IMPACT THE FLORIDA CONSTRUCTION INDUSTRY

By Jim Dickson

The 2003 Legislature substantially altered Florida's workers compensation laws. Many of the changes were directed at the construction industry unrelated to issues of immunity discussed in the above article. These changes are summarized as follows.

The following amendments are January 1, 2004:

- A homeowner that pulls a permit is not subject to the requirements applicable to contractors if the owner does not intend to sell, resell, or lease the premises within one year after construction begins.
- The term "Employee" includes an independent contractor working or performing services in the construction industry and all persons working in the chain of contracts being paid by the contractor, unless a subcontractor has a valid exemption. Independent contractor status applies only to individuals not engaged in the construction industry.
- Only officers in a corporation, not to exceed three, may elect to be exempt. This limit applies to any group of affiliated corporations in the construction industry. Each officer must also be a shareholder with at least 10 percent of the stock of the corporation and listed as an officer with the Division of Corporations. No person that works as a proprietorship or in a partnership can obtain an exemption.
- A corporate officer in the construction industry that files an exemption must include a copy of the stock certificate showing that the officer has at least a 10 percent owner interest in the corporation. The department will revoke an exemption if the officer no longer meets the requirements for exemption.
- Exempt officers may not recover workers' compensation benefits and the insurance carriers may not consider the exempt officer as an employee for determining premium. (A corporate officer that elects an exemption is not barred from filing a lawsuit and seeking to recover all damages available at common law. A general contractor should thus keep all non-insured officers off of a project site.)

The following amendments became effective October 1, 2003.

- A contractor must request evidence of compensation insurance or a valid exemption from all subcontractors.
- A subcontractor is not liable for the payment of compensation to employees of another subcontractor or the contractor. It is protected by the exclusiveness-of-liability provision if the subcontractor or contractor

has coverage for the subcontractor's employees and gross negligence of the subcontractor was not the major cause of the accident.

- All construction employers must obtain a Florida endorsement or purchase a Florida workers' compensation policy for its employees that utilize Florida class codes, rates, rules, and manuals. Violation is a second-degree felony.
- Every employer, (except a homeowner) when applying for and receiving a building permit, must show proof and certify to the permit issuer that it has secured coverage.
- An employee cannot sue an employer at common law for damages unless his injury was caused an employer's intentional tort. The statute now provides that in order to establish that an accident was caused by an independent tort an employee must prove by clear and convincing evidence that the employer deliberately intended to injure the employee; or the employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings identifying a known danger, was virtually certain to result in the employee's injury or death, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger.