

Workers' Compensation, horse owner using race track

Number: INFORMAL

Date: August 23, 2002

The Honorable Dennis K. Baxley
Representative, District 24
111 Southeast 25th Avenue
Ocala, Florida 34471-9179

Dear Representative Baxley:

You ask on behalf of a constituent whether a racing facility, such as Tampa Bay Downs, may require a horse owner who races at the track to obtain workers' compensation coverage when the owner takes the position that he is an agent not subject to Chapter 440, Florida Statutes.

In sum, the determination of whether an employer, such as a horse owner using race track facilities, is exempt from the coverage requirements of Chapter 440, Florida Statutes, is one that would be made by the Division of Workers' Compensation.

Section 440.10(1)(a), Florida Statutes, states:

"Every employer coming within the provisions of this chapter, including any brought within the chapter by waiver of exclusion or of exemption, shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38."

Moreover, if an employer willfully fails to secure compensation required under Chapter 440, the Division of Workers' Compensation may assess a penalty of up to \$5,000 for each employee of the employer who has been classified by the employer as an independent contractor, but who is found by the division to not meet the criteria for an independent contractor prescribed in section 440.02, Florida Statutes.[1]

The workers' compensation law is to be interpreted in a manner "to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." [2] The liability of an employer under the workers' compensation law is exclusive and in place of all other liability that may arise from the injury or death compensable under the act, unless the employer fails to secure payment of compensation.[3]

The Legislature has found that the failure of an employer to comply with the workers' compensation coverage requirements poses a danger to the public health, safety and welfare. The Division of Workers' Compensation is authorized to conduct investigations to secure

employer compliance with such requirements.[4]

Generally, all employees are subject to coverage under Chapter 440, Florida Statutes. An employee, however, does not include an "independent contractor" as that term is defined in section 440.02(14)(d), Florida Statutes, or as determined by common-law principles, giving consideration to the business activity of the individual. As the agency charged with the administration of the workers' compensation law, however, the Division of Workers' Compensation is the appropriate entity to make a determination of whether an employee or employer is subject to the coverage requirements.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] Section 440.10(1)(f), Fla. Stat.

[2] Section 440.015, Fla. Stat.

[3] Section 440.11(1), Fla. Stat.

[4] Section 440.107, Fla. Stat.