

Workers' Compensation, wallpaper hangers

Number: INFORMAL

Date: July 25, 2002

The Honorable Dennis A. Ross
Representative, District 63
4416 Florida National Drive
Lakeland, Florida 33813

Dear Representative Ross:

You ask whether wallpaper hangers are engaged in construction such that they are required to obtain workers' compensation insurance when a commercial building project is estimated to be valued at \$250,000 or more. Changes to section 440.02(14), Florida Statutes, defining "employee" for purposes of workers' compensation coverage, include a sole proprietor or partner actively engaged in the construction industry with respect to any commercial building project estimated at \$250,000 or more.[1]

As amended during the 2002 legislative session, section 440.02(14), Florida Statutes, defines "[e]mployee" for purposes of workers' compensation coverage to include sole proprietors or partners actively engaged in the construction industry, unless they elect in writing to be excluded from the definition.[2] However, when such a sole proprietor or partner is actively engaged in the construction industry with respect to a commercial building project with an estimated value of \$250,000 or more, no exemption from the definition of employee is applicable.[3] Moreover, independent contractors are generally excluded from the definition of employee, except when they are actively engaged in the construction industry in a project valued at \$250,000 or more.[4]

For purposes of Chapter 440, Florida Statutes, "[c]onstruction industry" is defined as

"for-profit activities involving the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction. However, "construction" shall not mean a landowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold or resold."[5]

This definition provides rather broad coverage for the term "construction industry" that does not appear to have been interpreted by any court of this state. The Division of Workers' Compensation in the Department of Insurance, however, has taken the position that independent contractors or sole proprietors who are actively engaged in the construction industry on commercial jobs valued at \$250,000 or more are no longer exempt from workers' compensation requirements for those particular projects.[6] This office has been informed by that division that the recent statutory changes affect any independent contractor or sole proprietor, such as a wallpaper hanger, working on a commercial project with a total value within the specified monetary limits. The interpretation of the terms of the legislation by the Division of Workers'

Compensation, as the agency charged with the administration of the workers' compensation laws, is accorded great weight.[7]

The questions you have raised and the position you have taken suggest that the recent changes to the workers' compensation laws may need legislative clarification. I trust these informal comments are of assistance to you.

Sincerely,

Joslyn Wilson
Director, Opinions Division

JW/tls

[1] See s. 5, Ch. 2002-194, Laws of Florida.

[2] Section 440.02(14)(c)1., Fla. Stat., as amended by Ch. 2002-194, Laws of Fla.

[3] Section 440.02(14)(c)2., Fla. Stat., as amended by Ch. 2002-194, Laws of Fla.

[4] Section 440.02(14)(d), Fla. Stat.

[5] Section 440.02(7), Fla. Stat.

[6] See Bulletin 234, Ms. Annemarie Craft, Interim Workers' Compensation Administrator, Division of Workers' Compensation, June 20, 2002 (copy enclosed).

[7] See *Department of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815 (Fla. 1983), and *State ex rel. Biscayne Kennel Club v. Board of Business Regulation of Department of Business Regulation of State*, 276 So. 2d 823 (Fla. 1973) (well settled that the construction of a statute by the agency charged with its administration is entitled to great weight and will not be overturned unless it is clearly erroneous).