



Worker's Compensation Insurance in New Jersey

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In recent years, a number of organizations have contacted New Jersey Volunteer Lawyers for the Arts, Inc. (NJVLA) after receiving notification that they must provide worker's compensation insurance for those who have traditionally been considered independent contractors. New Jersey is one of the few states that do not cover independent contractors in worker's compensation policies. As a matter of public policy, New Jersey is now requiring organizations to classify these workers as employees for insurance purposes so that they too may receive the benefits of worker's compensation.

DOES THIS PAMPHLET PERTAIN TO YOU?

Are you an actor in a yearlong production that takes place only once a week who was hit by a bottle thrown by stagehand and injured? What if you are an under-study dancer, performing with a number of different dance companies, who tripped over a prop on stage and broke your leg? Are you a musician that was injured by a fallen stage-light while practicing for a seasonal orchestra performance? If you are a person who may find yourself in a similar situation, you should know your rights and the benefits that you are able to receive. The following information will quickly outline workers compensation and its applicability to you.

WHAT IS WORKER'S COMPENSATION?

Worker's compensation insurance allows a worker, who was not himself or herself negligent at the time of the incident, to recover for personal injuries that are caused by

accident, but which arise out of and in the course of their employment, and where the negligence of the employer is the cause. N.J. Stat. Ann. § 34:15-1 (West 2009). Generally, corporations, partnerships, LLCs, and sole proprietorships in New Jersey must carry worker's compensation insurance. *An Employer's Guide to Worker's Compensation in New Jersey*, **NJ Dep't of Labor and Workforce Dev**, http://lwd.dol.state.nj.us/labor/forms_pdfs/wc/pdf/WC-373.pdf.

WHAT ARE THE BENEFITS OF WORKER'S COMPENSATION?

Worker's compensation allows workers to recover financially for their injuries without having to prove fault, also known as "no fault" insurance. By avoiding lengthy litigation, the worker will receive quicker payouts and the employer will be protected from large claims. Financial compensation includes medical expenses, such as doctor's visits, hospital stays, and medical expenses; disability pay, including temporary or permanent pay for a portion of your typical paycheck; and vocational rehabilitation, such as training in a new field if you are unable to reenter your occupational workforce.

WHAT ARE THE CONSEQUENCES OF NOT CARRYING WORKER'S COMPENSATION INSURANCE?

Failure to provide all eligible workers with worker's compensation coverage will impose severe consequences such as fines for each uncovered worker. Because New Jersey law requires all workers to have workers compensation coverage, even for casual employees, general liability insurance will not cover the uninsured workers. Any claims brought by the uninsured may result in liens against the company in order to pay out the claims. Even though the extra cost of covering the traditional independent contractor and casual employees will be expensive, the potential outcome of non-coverage may result in the complete dissolution of the company.

http://lwd.dol.state.nj.us/labor/wc/employer/require/insure_index.html

HOW DO I KNOW IF I SHOULD BE COVERED BY WORKER'S COMPENSATION INSURANCE?

If you are classified as an employee for all purposes, then your employer already should be providing worker's compensation insurance for you; however, if you are traditionally considered an independent contractor, you may want to confirm with your employer that coverage is available in the event of an "at-work" accident. Courts have typically used one of two tests to determine whether a worker is an employee or an independent contractor. The first test, the "control test," analyzes whether the employer had the right to direct the manner in which the work was being done, as well as having control over the results accomplished. However, the courts place more reliance on the "relative nature of work test". This test analyzes the nature of the employer's business and decides whether the work employed was an integral part of the regular business, and

whether the worker is economically dependent upon the employer. Kertesz v. Korsh, 296 N.J.Super. 146 (1996).

The courts liberally construe the statute in order to cover as many cases as possible under the Act. While no one factor is determinative, it is the totality of the facts and circumstances that ultimately determine the status of the worker. Kertesz, 296 N.J. Super. at 157.

Here are a few factors that may determine if you are an employee under New Jersey worker's compensation law:

- Employer has the right to direct the manner of the employee's work
- Employer has the right to exercise actual control over employee
- Employer may provide necessary equipment
- Employer has a continual or routine relationship with the employee
- Employer has the right to terminate employee
- Employer has control over the hours that employee works
- Employee does not have the right to delegate
- Employer incurs principal expenses throughout employment

Here are a few factors that may make you ineligible for worker's compensation benefits:

- Independent contractor has the freedom to work his/her own hours
- Independent contractor has the right to offer services to others
- Independent contractor often furnishes own equipment
- Independent contractor has the right to do work according to his/her own methods

AN ILLUSTRATION OF PAST COURT HOLDINGS

In one case, a ballerina who was hired by an organization under a "hire for contract" to perform in a musical play for a specific period of time was found to be an employee for purposes of worker's compensation insurance. The court used the following factors in its analysis: (1) the requirement to play a specific part in a specific musical; (2) the requirement to meet a contractually specified rehearsal and performance schedule; (3) the

contractual obligation to have hair styled in accord with the time period of the show; (4) the requirement to wear shoes and make-up provided by the organization; and (5) the obligation to provide exclusive services to the organization during the term of the contract. Despite the performer's degree of creative freedom in dancing and acting, the employer was found to have control over the performance. Makarova v. United States, 201 F.3d 110 (2d Cir. 2000). Consequently, the performer was covered by the employer's workers' compensation insurance.

SUGGESTIONS

If you are a worker in the arts, it is in the financial interest of you and your employer to make sure that you have worker's compensation coverage. If you are an employer and have already received notification that you are accountable for penalty fines as a result of failing to cover certain workers, please contact an attorney to determine for what you may be liable. Although there is an opportunity for a hearing to contest any fines, as a general rule all workers must be provided Worker's Compensation.

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