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**WORKERS' COMPENSATION DIVISION BULLETIN 19-02  
DIVISION OF INSURANCE BULLETIN B 19-08  
COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT**

**TO: ALASKA EMPLOYERS  
INSURANCE INDUSTRY  
OTHER INTERESTED PARTIES**

**RE: REVISED BULLETIN REGARDING NEW ALASKA WORKERS'  
COMPENSATION LAWS:  
CORPORATE OFFICERS AND LLC MEMBERS AS EMPLOYEES AS 23.30.240  
(Repealing and Reenacting AS 23.30.240 Effective August 1, 2019)  
DEFINITION OF EMPLOYEE AS 23.30.395(19)  
(Repealed and Reenacted Effective November 22, 2018)  
INDEPENDENT CONTRACTOR DEFINITION AS 23.30.230(a)(12)  
(Replacing 8 AAC 45.890, Effective November 22, 2018)**

The Alaska Workers' Compensation Division (WCD), the Alaska Division of Insurance (DOI), and the Alaska Division of Corporations, Business and Professional Licensing (CPBL), have received inquiries pertaining to changes in the Alaska Workers' Compensation Act effected by last year's passage of HB79. Given the overlapping relationship of these concerns, the divisions are issuing this joint bulletin under each of the divisions' respective bulletin numbers to address the inquiries. This bulletin will explain in detail the statutory changes that either have already occurred or will occur in the near future. This bulletin is being reissued to correct an error in the previous version.

**EFFECTIVE AUGUST 1, 2019**

**CORPORATE OFFICERS AND LLC MEMBERS WITH LESS THAN 10%  
OWNERSHIP INTEREST ARE EMPLOYEES  
WCD EXECUTIVE OFFICER WAIVER PROGRAM REPEALED**

**Please note: This bulletin is provided as general guidance only, and makes no representations or promises regarding how the Alaska Workers' Compensation Board may decide any matter brought before it.**

Effective August 1, 2019, AS 23.30.240 is repealed and reenacted to read:

**AS 23.30.240. Officers of corporations, municipal corporations and nonprofit corporations, and members of limited liability companies as employees.**

(a) Except as provided in (b) of this section, an executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation or a member of a limited liability company organized under AS 10.50 is not an employee of the business entity under this chapter if the executive officer or member owns at least 10 percent of the business entity. Except as provided in (b) of this section, an executive officer of a municipal corporation or charitable, religious, educational, or other nonprofit corporation is not an employee of the corporation under this chapter.

(b) Any type of corporation or limited liability company may bring an executive officer or a member exempted under (a) of this section within the coverage of the business entity's insurance contract by specifically including the executive officer or member in the contract of insurance. The election to bring the executive officer or member within the business entity's coverage continues in force for the period during which the contract of insurance is in effect. During that period, an executive officer or a member brought within the coverage of the insurance contract is an employee of the business entity under this chapter.

**8 AAC 45.184. Executive Officer Waivers.** This regulation is also repealed effective August 1, 2019, meaning the WCD will no longer accept applications or issue executive officer waivers after July 31, 2019. If a corporate executive officer or limited liability company member has less than 10% ownership interest in the entity, the entity must insure that officer or member for workers' compensation liability. If a corporate executive officer or limited liability company member has 10% or more ownership interest in the entity, the entity may voluntarily elect to bring the individual within the scope of its workers' compensation insurance coverage.

For enforcement purposes, the WCD will recognize executive officer waivers issued up through July 31, 2019, but only through expiration of the current existing workers' compensation insurance policy or until the insured employer voluntarily cancels the current policy. In the absence of an effective executive officer waiver, the divisions will rely on entity registrations filed with CPBL that visibly demonstrate the entity is current, active and in good standing, with all listed ownership interest totaling 100%. Only individual persons may be exempt for purposes of workers' compensation liability. There are no provisions in the Alaska Workers' Compensation Act to exempt entire entities, even when listed as shareholders of other entities. Parent companies and subsidiaries are independent from each other for purposes of workers'

compensation liability. Previously issued waivers for involuntarily dissolved domestic corporations that are not reinstated for over two years will be considered cancelled effective two years after the dissolution. Previously issued waivers for administratively dissolved foreign corporations are considered cancelled effective the date of dissolution.

HB79 specifies that only policies entered into or renewed on or after August 1, 2019 are subject to the reenacted version of AS 23.30.240, appearing above. Accordingly, policies should not require midterm changes in terms or premiums due to the change in AS 23.30.240. Rather, the impacts will be realized at the first renewal on or after August 1, 2019.

Insurers are encouraged to notify affected policyholders prior to their renewal on or after August 1, 2019 regarding the law change and its potential impacts. For more specific guidance on insurance-related topics, see the [FAQs link](#) on the DOI website

Business entities with an Alaska Construction Contractor's license showing officers and members with less than 10% ownership need to either insure those officers and owners for workers' compensation liability or contact the Corporations Section of the Division of Corporations, Business and Professional Licensing to discuss options for changes of ownership interest that allow for executive officers and owners to own the required percentage of the business entity in order to remain exempt. The CPBL will verify ownership interest during the bi-annual license renewal for each licensee.

## **EFFECTIVE NOVEMBER 22, 2018**

### **DEFINITIONS OF EMPLOYEE AND INDEPENDENT CONTRACTOR**

Effective November 22, 2018, AS 23.30.395(19) was repealed and reenacted to define an employee as "a person who is not an independent contractor as described in AS 23.30.230 and who, under a contract of hire, express or implied, is employed by an employer[.]"

Also effective November 22, 2018, the Alaska Workers' Compensation Board repealed regulation 8 AAC 45.890, the balancing test previously utilized to determine employee status for purposes of workers' compensation liability. This regulation was replaced by the independent contractor definition set out in AS 23.30.230(a)(12), which requires all the definition criteria to be met simultaneously. In order to be considered an independent contractor under the Alaska Workers' Compensation Act, one must:


- (1) have an express contract to perform services;
- (2) be free from direction and control over the means and manner of providing services;
- (3) incur most of the expenses for tools, labor, and other operational costs;
- (4) have an opportunity for profit and loss from the services performed,
- (5) be free to hire and fire employees to help perform the services for the contracted work;
- (6) have all business, trade, or professional licenses required by federal, state, or municipal authorities of an individual or business engaging in the same type of services; and
- (7) follow Internal Revenue Service requirements by obtaining an employer identification number and filing business income appropriately;

**IN ADDITION, an independent contractor must meet at least two of the following criteria:**

- (1) be the person responsible for completion of the work and subject to liability for the work, or maintain liability or other insurance policies necessary to protect the employees, financial interests, and customers of the business;
- (2) maintain a separate business location or business mailing address from the individual or entity for which services are performed; or
- (3) provide contracted services for two or more different customers within a 12-month period or engage in business advertising, solicitation, or other marketing efforts to obtain new contracts.

Producers and brokers are encouraged to discuss the information contained herein with their clients applying for or renewing workers' compensation coverage, and to provide a copy of this joint bulletin to them. For answers to questions regarding premium assessments for uninsured contractors and subcontractors, please see the joint bulletin 18-01 located on the [DOI website](#) or on the [WCD website](#).

DATED: June 14, 2019



Grey Mitchell  
Director, Division of Workers' Compensation

DATED: June 18, 2019



Lori Wing-Heier  
Director, Division of Insurance

DATED: June 18, 2019



Sara Chambers  
Director, Division of Corporations, Business  
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