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## **AS A LANDOWNER, CONSULTING FORESTER OR LAND MANAGER, HOW CAN I BE SURE I'M CONTRACTING WITH A LOGGING CONTRACTOR THAT IS IN COMPLIANCE WITH VERMONT'S WORKERS' COMPENSATION INSURANCE REQUIREMENTS?**

Workers' Compensation (WC) insurance in Vermont's forest economy has become prohibitively expensive due to several factors, one being that there is a small number of insured logging contractors and the high risk is spread over a small pool. Not all logging contractors are fully aware of their responsibility to provide WC coverage for their employees. This increases the chance that an injured person may seek compensation from landowners and their agents, including consulting foresters and land managers, and the logging contractors that brought them onsite. It also creates an unlevel playing field and significant difference in the cost to operate between responsible employers with proper insurance and those that avoid coverage. A higher stumpage value on paper could translate to liability if an injury occurs onsite during a logging operation with uninsured employees. Landowners and their agents can play a key role in changing the existing culture by verifying that contractors are properly insured, or legally exempted from WC coverage.

The Workers' Compensation Act starts with the presumption that if a business (in this instance, a logging contractor) contracts with an individual who is paid to perform work related to that business, that individual is an employee and must be covered by WC. Those performing work must either qualify for an exemption, or, be covered by a WC policy. Use the following guidance to determine if the logging contractor needs WC coverage or not.

If two or more people are performing work on the site of a logging operation, the following questions must be answered:

1. Am I contracting with an LLC or a Corporation?
  - a. If yes, see paragraph A below
  - b. If no, go to 2.
2. Am I contracting with an individual, sole proprietor or partnership, including an LLP?



3. If yes:
  - a. A written contract with elements that identify the legal exemptions from WC requirements is highly recommended with the terms spelled out in [21VSA, Section 601 \(14\) \(F\)](#); *Sample contract language can be found [here](#)*
  - b. See paragraph B below. Also see Best Practices If A Business Is Contracting With A Sole Proprietorship Or Partnership Including Limited Liability Partnerships (LLP) on page 4.
4. Do other exemptions apply?
  - a. See C. below

A. The contract is with an LLC or Corporation and the LLC or Corporation has a WC policy, or, the LLC or Corporation has no more than 4 members that have each filed a [Form 29](#) to exclude themselves from coverage and received approval from the VT Dept. of Labor. It is recommended that the landowner or their agent, including a consulting forester, obtain a copy of the approved exclusions. **If an approved Form 29 or WC certificate of insurance is not provided, then you risk being found the employer of any individual corporate officer or LLC member injured while performing the work. You will have the burden of proving that the work performed is not within the nature of your business, which may be difficult to do.**

- B. The landowner or their agent, including a consulting forester, documents\* that the individual is in an established business working for him or herself and performs work that is completely outside of the work performed by the entity that contracted with them to work on the jobsite and is not subject to the direction or control of the hiring business in terms of the means and manner of the work. See Best Practices If A Business Is Contracting with A Sole Proprietorship Or Partnership Including Limited Liability Partnerships (LLP) on page 4.
- a. \*Documentation may include:
    - i. Business registration with the Secretary of State
    - ii. Contracts for services
    - iii. Advertising e.g. business cards, newspaper advertisements
    - iv. A description of the work performed by the business, best included in the contract



### C. Family/Household and other exemptions

There are a few other exemptions which may exclude an individual from being considered your employee. These are interpreted narrowly.

- a. To qualify for the family/household exemption, the person must live in the same household. If you are a sole proprietor or partnership, or an LLP and the individual performing the work is a family member AND lives in your household or the household of a partner or limited partner, then the individual will not be considered your employee, unless you choose to include the individual's payroll when calculating the WC insurance premium. This exemption is NOT available if you are a corporation or LLC, or,
- b. If you hire an individual to perform work in or about your private dwelling the individual will not be considered your employee, unless you choose to cover that individual, or,
- c. If the individual performs work that is of a casual nature\* AND NOT for the purpose of your trade or business, or,  
(1) \*Sporadic, intermittent and not regular
- d. If you are engaged in agriculture or farm employment AND your total aggregate payroll is less than \$10,000.

**You may utilize the “Workers Compensation Insurance Checklist for Landowners and Foresters Administering Timber Sale Contracts and Logging Operations in Vermont” as a companion to this guidance. Logging contractors, and purchasers of standing timber, can utilize the “Workers’ Compensation Insurance Checklist for Logging Contractors & Purchasers of Standing Timber in Vermont” for each subcontractor that is brought on site.**

**For additional information, please contact: J. Stephen Monahan at the Department of Labor at 802-828-2138 or [stephen.monahan@vermont.gov](mailto:stephen.monahan@vermont.gov)**



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## **BEST PRACTICES: For Businesses Contracting with A Sole Proprietorship Or Partnership Including Limited Liability Partnerships (LLP)**

1. Does the sole proprietorship or partnership, or LLP use workers other than the sole proprietor or partner?
  - a. If yes, the sole proprietorship or partnership, or LLP **MUST** have workers' compensation insurance – ask for proof of coverage. (This may also be checked on line through the VDOL website:  
<https://www.ewccv.com/cvs/?ref=http:%2F%2Flabor.vermont.gov%2Fworkers-compensation%2Finjured-workers%2Fdoes-my-employer-have-workers-comp-coverage%2F>)
  
2. If the sole proprietorship or partnership, or LLP does **NOT** use workers other than the sole proprietor or partner then have a written contract containing the following:
  - a. The individual sole proprietorship or partnership, or LLP holds itself out as in business for itself
  - b. The individual the sole proprietorship or partnership, or LLP holds itself out for work for the public and does not perform work exclusively for you.
  - c. The individual sole proprietorship or partnership, or LLP is performing work that is distinct and separate from your business (describe the work to be performed).
    - i. Work is likely to be considered distinct and separate from the work you (the hiring business) perform if:
    - ii. It is work that your business does not ever perform; or,
    - iii. It is work that requires a degree of skill and expertise, or equipment, that your business does not have.
  - d. The individual sole proprietorship or partnership, or LLP will control the means and manner of the work it will perform.



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- e. Your business will not treat the individual sole proprietorship or partnership, or LLP as an employee for purposes of income or employment taxation with regard to the work performed.
  - f. The individual sole proprietorship or partnership, or LLP is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors.
  - g. The individual sole proprietorship or partnership, or LLP recognizes its right to purchase workers' compensation insurance coverage for the sole proprietor or partners including limited partners and has elected not to do so.
    - i. *These criteria are taken from 21 VSA §601(14)(F).*