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## NEWS BRIEF

Key Issues Facing Business Owners

February 2008

# What's News In Insurance

## *New Law Redefines "Independent Contractor"*

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A new law becomes effective in Illinois on January 1, 2008, which significantly narrows the definition of "independent contractors" and imposes serious penalties on employers who do not comply with the new law. The Illinois Employee Classification Act of 2007 ("the Act") was signed into effect on August 6, 2007, but will not be enforced until after the first of the year. The Act applies to the construction industry, including public and private construction, residential and commercial building, street, bridge, sewer, water works, railroad and excavation work, as well as maintenance, repair, landscape, decorating work and the moving of construction related materials on the job site to or from the job site.

### **Tests for Independent Contractor Status:**

The Act creates a presumption that any individual performing any service for a construction contractor is an employee, *unless* one of two different several-factor tests is satisfied.

The first test includes three criteria and is being referred to as the "ABC test." It provides that an individual performing services for a contractor is deemed to be an employee of the contractor unless 1) the individual is free from control or direction over the performance of the service for the contractor; 2) the service performed by the individual is outside the usual course of services performed by the contractor; AND 3) the individual is engaged in an independently established trade, occupation, profession or business.

### **Penalties for Violations:**

The Act includes a surprisingly severe penalties section which creates the ability for "any interested party" to file a complaint with the Department of Labor if they suspect that an employer has violated the Act. Individuals are incentivized to file a complaint because the Act provides that 10% of the amount recovered for violations shall be awarded to the complaining party. Such a complaint then authorizes the Department to conduct an investigation and inspect documents related to the determination of an individual's status as either an independent contractor. If violations are discovered, the Department may assess *finest of up to \$1,500 for each individual and for each day, or up to \$2,500 for each repeat violation within a 5 year period.*

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