

INDEPENDENT CONTRACTOR OR EMPLOYEE – WORKERS’ COMPENSATION

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Business and Professions Code section 7125.2 provides in part that the “failure of a licensee to obtain or maintain workers’ compensation insurance... shall result in the automatic suspension of the license by operation of law...”

There are two reported cases that bear on this issue, Wright v. Issak and Loranger v. Jones. The Wright case held that a contractor who grossly and intentionally under reported his employees effectively failed to “obtain” insurance and fell subject to the sanctions in section 7125.2.

The court in Loranger disagreed with the Wright holding: “...we neither have been cited to nor have we found any authority for the proposition that a worker found to be an employee of a contractor... will not be covered by the contractors’ existing workers’ compensation insurance policy if there is any discrepancy in the contractors reporting of payroll.”

The holdings in the Wright case and Loranger case, although coming up with different results, raise the issue that the failure to have workers compensation insurance or alternatively, even if you had workers’ compensation insurance and fail to report employees puts you, as a contractor, in jeopardy of being determined to be unlicensed. If you are determined to be unlicensed, you will then be precluded from collecting money for any construction project and may very well be required to pay back any money that you receive.

This brings us now to the issue of independent contractor or employee. Many contractors on many of their projects use workers which are sometimes referred to as “day laborers” to assist them in their construction endeavors. If this worker is unlicensed, and performs work that requires a license, the worker would be considered under the law to be an employee, which requires that the employer provide workers’ compensation insurance, issue a W-2, take payroll taxes out of the check of the worker, etc.

In the Wright case, the contractor had workers’ compensation insurance but since he used workers that he did not report to his workers’ compensation carrier, and those workers were deemed to be employees, the Wright court found that the contractor had violated the law and considered the contractors’ license suspended by operation of law.

The moral of the story is that if you perform work with workers that are not deemed to be independent contractors (an independent contractor is a person who possesses his or her own license) and you do not report the payroll for the particular worker to your workers’ compensation carrier or if you do not have workers’ compensation insurance, you will be deemed by operation of law to have a suspended license and therefore, put yourself in jeopardy for not being able to collect for the work you performed and may very well have to return money that has been paid to you.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic’s Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman:

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