

**STATE OF MINNESOTA  
Department of Labor and Industry**

In the Matter of the Proposed Adoption  
of Workers' Compensation Rules:  
Independent Contractor Rule

**STATEMENT OF NEED AND  
REASONABLENESS**

Minnesota Rules, part 5224 establishes standards distinguishing between an employee and an independent contractor for workers' compensation coverage purposes. The authority for part 5224 is contained in Minn. Stat. § 176.83, subds. 1 and 11 which provides:

Subd. 1. Generally. In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter. The rules include but are not limited to the rules listed in this section.

Subd. 11. Independent contractors. Rules establishing criteria to be used by the division, compensation judge, or court of appeals to determine "independent contractor."

The single amendment to this part corrects an outdated statutory citation. Section 176.012 of Minnesota Statutes was repealed in 1987 by 1987 Minn. Laws, Chapter 332, section 117. The language in section 176.012 was moved to section 176.041, subd. 1a. The amendment is needed to reflect the current location of the statutory provisions governing workers' compensation required insurance coverage, exclusions from mandatory workers' compensation coverage, and optional election of coverage for independent contractors.

The current reference to section 176.012, the repealed statutory provision concerning election of coverage for owners, such as independent contractors, has led some to argue that part 5224 only applies when there is an issue concerning the election of workers' compensation coverage by an otherwise statutorily excluded worker under section 176.041. This narrow application of part 5224 was never the intent of the Department of Labor and Industry. The rules were intended to apply, and have been applied, to any workers' compensation coverage dispute concerning employee versus independent contractor status. If the worker is an employee, the workers' compensation law applies to the worker. If the worker is an independent contractor, workers' compensation insurance coverage is optional. Minn. Stat. § 176.021 and 176.041. Paragraph (e), of section 176.012 incorporates the coverage requirements of sections 176.021 and 176.041 by stating: "The persons, partnerships and corporations described in this subdivision may elect to provide the insurance coverage required by this chapter: ... (e) A person, partnership, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor."

|  |                              |                |
|--|------------------------------|----------------|
| Post-It™ brand fax transmittal memo 7671 |                              | # of pages ▶ 2 |
| To<br><i>Michelle Swanson</i>            | From<br><i>Lenny Johnson</i> |                |
| Co.<br><i>LCRAR</i>                      | Co.                          |                |
| Dept.                                    | Phone # <i>296-2482</i>      |                |
| Fax # <i>296-1321</i>                    | Fax #                        |                |

One cannot determine whether coverage is required by Chapter 176 without first determining whether the worker is an employee or an independent contractor. Section 176.021, subd. 1 provides that all employees are covered by workers' compensation insurance. Section 176.041, subd. 1 (e) excludes from workers' compensation insurance coverage independent contractors as defined by rules adopted by the Commissioner pursuant to section 176.83. Therefore, a determination of independent contractor versus employee status is relevant to both mandatory coverage requirements and election of coverage where coverage is not mandatory. One never gets to the issue of optional coverage for independent contractors without first determining that coverage was not required by sections 176.041 and 176.021. The amended rule more clearly states that the rules apply to all workers' compensation coverage issues involving employee or independent contractor status.

#### Costs to local public bodies

This is a technical amendment as described above which does not increase costs to local public bodies.

#### Effect on Spanish-speaking people and agricultural land

The amendment does not affect agricultural land or have any significant effect on Spanish-speaking people.

#### Small business impact

The amendment does not adversely impact small businesses. While independent contractors are the smallest form of operating businesses, the rule does not change the current application of the rules concerning independent contractors. It merely clarifies the existing rule by changing an outdated citation. The Department of Labor and Industry and the workers' compensation courts currently apply the rules to all workers' compensation coverage issues involving independent contractor status as stated in the proposed rule.

#### Witnesses

The Department intends to call staff members of the Department of Labor and Industry including the Commissioner or his designees as witnesses.

PJ/cb  
5/4/93