

The Municipal RISK MANAGER

SUMMER 2009

A Publication of the Maine Municipal Association

RMS Partners with Members to Promote Safety

The Safety Enhancement Grant and Scholarship Grant Programs offer financial incentives to members of the Maine Municipal Association Workers Compensation Fund. Safety Enhancement Grants are used to purchase safety equipment or services that assist in reducing the frequency and severity of workplace injuries.

The Maine Municipal Association has been awarding safety grants to Members of their Workers Compensation Fund since 1999. The Grant program has assisted municipalities by bestowing \$1.8 million through funding of 1428 Safety Enhancement Grants and 307 Scholarship Grants.

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IMPORTANT CHANGE

The MMA Property & Casualty Pool announces a New Boiler & Machinery Insurance Company...

TRAVELERS

Boiler & Machinery Equipment Breakdown Effective 7/1/09

For jurisdictional (state required) inspections, new installations or old replacements, please call the customer service hotline:

1-800-425-4119 or

email: boilinsp@travelers.com

or

**MMA Risk Management Services
@ 1-800-590-5583**

Welcome New Members!

Property & Casualty Pool:

Town of Cornish
Glenwood Plantation
Mid-Coast Regional Planning
Commission
Saint Agatha

Unemployment Compensation:

Town of Dixfield
Municipal Review Committee

Workers Compensation:

AOS 92-Kennebec Valley
Consolidated Schools
Glenwood Plantation
Mid-Coast Regional Planning
Commission
Municipal Review Committee
Regional School Unit No. 12
Regional School Unit No. 16
Regional School Unit No. 23
Regional School Unit No. 25
Regional School Unit No. 34
Regional School Unit No. 39

Agencies who can answer questions about independent contractor issues.

Maine Department of Labor

P.O. Box 259
 Augusta, ME 04332-0259
 Tel: (207) 623-7900, Fax: (207) 623-7938
 TTY: 1-800-794-1110
 e-mail: webmaster.bls@maine.gov
 web site: www.maine.gov/labor

Maine Workers' Compensation Board

Coverage Division
 27 State House Station
 Augusta, ME 04333-0027
 Tel: (207) 287-7071, Fax: (207) 287-5895
 TTY: (207) 287-6119
 e-mail: Linda.Larrabee@maine.gov
 web site: www.maine.gov/wcb

Maine Revenue Service

Income/Estate Tax Division
 24 State House Station
 Augusta, ME 04333
 Tel: (207) 626-8475, Fax: (207) 624-9694
 TTY: 1-888-577-6690
 e-mail: withholding.tax@maine.gov
 web site: www.maine.gov/revenue

U.S. Department of Labor

Wage and Hour Division
 100 Middle Street Plaza
 Portland, ME 04101
 Tel: (207) 780-3344
 Fax: (207) 780-3783
 e-mail: claus.james@dol.gov
 P.O. Box 1356
 Bangor, ME 04401
 Tel: (207) 945-0330
 Fax: (207) 945-0332
 e-mail: collins.matthew@dol.gov
 web site: www.dol.gov

U.S. Internal Revenue Service

SS-8 Unit
 SS-8 Coordinator/Site Manager
 40 Lakemont Road
 Newport, VT 05855
 Tel: (802) 334-0252
 Fax: (802) 334-5607
 web site: www.irs.gov

Disclaimer: This brochure provides brief information and is not a substitute for laws or formal interpretations, which can be obtained from the agencies listed.

Independent Contractors in Maine



What is an Independent Contractor?

An independent contractor provides service(s) to employers under agreements with employers. In determining independent contractor status, all government agencies consider the amount of direction and control the business has on the individuals performing work. In general, if the business supplies training or equipment or tells the individuals when and how to do the job, the individuals are probably employees. Genuine independent contractors usually use their own tools and work their own schedule.

Independent Contractor or Employee: Why Does it Matter?

Being classified as an employee or as an independent contractor affects the taxes you pay and how you pay them. It affects eligibility for unemployment and workers' compensation, Medicare, overtime, and other benefits and protections. Generally, employers must classify those performing work under their direction and control as employees. Others may be able to be classified as independent contractors.

What are the Rules about Independent Contractors?

There are different rules and tests used by government agencies to determine independent contractor status, as different agencies are responsible for separate aspects of law. For example, the Internal Revenue Service (IRS) and Maine Revenue Services (MRS) refer to "common law rules." Unemployment Compensation uses the "ABC" test and Workers' Compensation considers other factors. Because agencies have different ways to determine independent contractor status, **a business may have to pay unemployment taxes and/or carry workers' compensation insurance even if IRS or Maine Revenue Services determine that, for income tax purposes, individuals may be independent contractors.**

The guidelines of each agency are too detailed for one brochure. **It is extremely important to understand how different laws may affect you. Employers should ask each agency if they consider individuals as employees or independent contractors before the work begins.**

If your business uses independent contractors, you

- May be liable for back taxes, wages, and/or penalties if you misclassify employees as independent contractors
- Should consult each of the governmental agencies listed in this brochure to determine independent contractor/employee status
- May have to carry workers' compensation insurance
- May have to pay unemployment taxes
- Must ensure that foreign workers are legal and documented
- Do not withhold taxes or Medicare insurance

If you work as an independent contractor, you:

- Pay your own taxes
- May not be entitled to unemployment insurance compensation or workers' compensation
- May not be protected by wage payment and recordkeeping laws, such as minimum wage and overtime
- Direct and control your work and the work of your employees

Frequently Asked Questions about Independent Contractors

1. How can I find out how and when I have to pay taxes?

Contact the Internal Revenue Service (IRS), Maine Revenue Service (MRS), and Maine Department of Labor Bureau of Unemployment Compensation (contact information listed on front page).

2. What kind of wage statement should employees get or businesses provide?

Employees receive a W-2 wage statement. Independent contractors receive a 1099-nonwage payment statement. If you're not sure which you should get (or provide), contact the IRS.

3. Should businesses have written contracts with independent contractors?

Written contracts can show the intent of both parties before the beginning of their working relationship. They may be useful in determining independent contractor status. The Workers' Compensation Board requires a written contract to apply for determination of independent contractor status.

4. Can General Contractors put people to work without putting them on the payroll?

If IRS determines the workers are independent contractors, they do not have to be on the payroll for income tax purposes. However, even if IRS determines the workers are independent contractors, another agency may consider them employees. So, employers may have to buy workers' compensation insurance and pay unemployment tax. To avoid paying back taxes and penalties, businesses should contact each agency before workers start a job.

5. How can businesses employ temporary workers from other countries when they are unable to find sufficient U.S. workers?

The Alien Labor Certification program of the Maine Department of Labor provides assistance in the hiring of temporary foreign workers.

6. How can employers learn if they need to purchase workers' compensation insurance?

Contact the Workers' Compensation Board.

7. Do woodlot owners need to purchase workers' compensation insurance for workers who are harvesting trees?

A woodlot owner who gets a "Conclusive Predetermination" from the Workers' Compensation Board or contracts with a wood harvester who has an approved Certificate of Independent Status does not have to carry workers' compensation insurance for that harvester.

8. How do harvesters obtain proof of independent contractor status?

Apply to the Workers' Compensation Board for a Certificate of Independent Status to confirm independent contractor status.

9. What agency investigates wage or overtime issues for employees?

The Maine Department of Labor and the U.S. Department of Labor Wage and Hour Division investigate complaints.

10. What protection do independent contractors have if injured on the job?

Contact the Workers' Compensation Board to learn about rights.

11. Can independent contractors get unemployment compensation?

The Maine Department of Labor, Bureau of Unemployment Compensation will determine coverage.

If you don't know all the responsibilities of being—or contracting with—an independent contractor, find out now so you can make the right decisions and avoid legal and financial problems down the road.

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SAFETY (cont'd)

We would like to congratulate the May 2009 Grant recipients

Town of Albion	Town of Exeter	Town of Liberty	Town of Rumford
Town of Arrowsic	Town of Fairfield	Limestone Water & Sewer District	Town of Sabattus
City of Augusta	Town of Falmouth	Lincoln County Comm.	City of Saco
City of Bath	Town of Farmington	Lincoln Water District	Sagadahoc County Comm.
Belfast Water District	Town of Fort Kent	Town of Linneus	Town of Scarborough
Town of Belgrade	Town of Frenchville	Town of Littleton	Town of Searsmont
Berwick Sewer District	Town of Friendship	Town of Long Island	Searsport Water District
City of Biddeford	Town of Gray	Town of Madison	Town of Sedgwick
Town of Bowdoinham	Great Salt Bay Sanitary District	Mapleton/Chapman/Castlehill	Town of Sherman
City of Brewer	Greater Augusta Utilities District	Town of Medway	Somerset County Comm
Town of Bucksport	Town of Hampden	Town of Milbridge	South Berwick Water District
Town of Buxton	Hampden Water District	Town of Millinocket	South Portland Housing Authority
Town of Camden	Town of Harrison	Town of Mount Vernon	South Portland School
Town of Cape Elizabeth	Town of Hermon	Northern Oxford Reg Amb Service	Town of South Thomaston
Carthage Fire Dept.	Hermon Volunteer Rescue & Fire	Town of Orono	Town of Stockholm
Central Penobscot Solid Waste	Town of Hiram	Town of Palmyra	Town of Stoneham
Town of Charleston	Town of Hodgdon	Penobscot County Comm.	Town of Thorndike
Town of Chelsea	Town of Jackman	Town of Phillips	Town of Vassalboro
Town of China	Town of Jay	Piscataquis County Comm.	Town of Wells
Aroostook County Comm.	Town of Kenduskeag	City of Pownal	Town of West Paris
Cumberland County Civic Center	Town of Kennebunk	Town of Rangeley	Town of Wilton
Town of Damariscotta	Knox County Comm.	Town of Readfield	Town of Winslow
Town of Dixfield	Town of Lamoine	Town of Richmond	Town of Winthrop
Town of Dixmont	Town of Levant	City of Rockland	Town of Woolwich
Town of Etna			Yarmouth Fire & Rescue

Ed MacDonald, Loss Control Manager for Maine Municipal Association, advises that the program received 147 applications for the May 2009 grant period, and that \$128,202.37 was awarded. Grants are awarded in May and October each year.

The Grant Recipients have put their funds to use by purchasing such equipment as Gas Detectors, Ergonomics Devices, Lock-out / Tagout Station, Training Aids, Material Handling Equipment, as well as Traffic Control Signage to assist in reducing the frequency and severity of workplace injuries.

For more information about any of the Maine Municipal Association Risk Management Service programs, including Safety Enhancement Grants eligibility and applications, please visit our website at www.memun.org and click on the Risk Management Services link, or call us at 1-800-590-5583.



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The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.