§105-A. Construction contractors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered or remodeled. [PL 2009, c. 452, §5 (NEW).]

B. "Construction subcontractor" means an independent contractor if the construction subcontractor meets the definition of independent contractor in section 102, subsection 13-A. [PL 2011, c. 643, §9 (RPR); PL 2011, c. 643, §14 (AFF).]

C. "Construction work" means any part of the construction, alteration or remodeling of a structure, including related landscaping and other site work performed in connection with the performance of such work, but not including surveying, engineering, examination or inspection of a construction site or the delivery of materials to a construction site. [PL 2009, c. 452, §5 (NEW).]

D. "Hiring agent" means a person that hires or contracts with a person to perform construction work, but excludes an owner or occupant of real property who hires a person or persons to perform construction work on that real property. [PL 2009, c. 452, §5 (NEW).]

E. "Person" means:

(1) An individual;

(2) A sole proprietor;

(3) A working member of a partnership;

(4) A working member of a limited liability company;

(5) A parent, spouse or child of a sole proprietor, partner or working member of a limited liability company under section 102, subsection 11, paragraph A;

(6) A working owner or part owner of a corporation; and

(7) A working shareholder of a professional corporation. [PL 2009, c. 452, §5 (NEW).]

[PL 2009, c. 452, §5 (NEW); PL 2011, c. 643, §9 (AMD); PL 2011, c. 643, §14 (AFF).]

2. Status of persons performing construction work. Beginning January 1, 2010, a person performing construction work on a construction site for a hiring agent is presumed to be the employee of the hiring agent for purposes of this Act, unless:

A. The person is a construction subcontractor; or [PL 2009, c. 452, §5 (NEW).]

B. The person owns and operates an item of equipment weighing more than 7,000 pounds and is hired by the hiring agent to operate the equipment on the construction site or to use the equipment to transport materials to or from the site. A person who leases such an item of equipment from a person in the leasing business, other than the hiring agent or an affiliate of the hiring agent, is regarded as the owner for the purposes of this paragraph. A truck with a gross vehicle weight rating greater than 7,000 pounds qualifies as an item of equipment under this paragraph. [PL 2009, c. 452, §5 (NEW).]

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3. Penalties. A person who is required to but fails to secure the payment of compensation with respect to persons deemed to be that person's employees under this section is subject to the penalties under section 324, subsection 3.

[PL 2009, c. 452, §5 (NEW).]

4. Insurer referral obligation. An insurer that believes in good faith that an insured employer withheld from it or from the State Tax Assessor records of payments to a person deemed to be the

person's employee under this section may, but is not required to, refer the insured employer and person to the State Tax Assessor in order that the assessor may take appropriate action, and the insurer enjoys immunity for such actions.
[PL 2009, c. 452, §5 (NEW).]

5. Stop-work orders. In addition to any penalty imposed under section 324, subsection 3, if after a hearing the executive director determines that a hiring agent or construction subcontractor has knowingly failed to secure the payment to that hiring agent's or construction subcontractor's employees of the compensation provided for by this Act, the executive director or the executive director's designee shall issue a stop-work order pursuant to this subsection. The issuance of a stop-work order by the executive director or the executive director's designee constitutes final agency action.

A. A hiring agent or construction subcontractor must receive at least 3 business days' notice of a hearing regarding a stop-work order. The executive director or the executive director's designee shall stay the issuance of a stop-work order if the hiring agent or subcontractor provides evidence acceptable to the executive director or the executive director's designee that the hiring agent or subcontractor has provided and will continue to provide workers' compensation coverage for the employees of that hiring agent or subcontractor or for the individuals whose status as employees or independent contractors is in question. Providing such coverage may not be evidence at the hearing that the hiring agent or subcontractor was required to do so under this Act. [PL 2009, c. 649, §1 (NEW).]

B. If the executive director or the executive director's designee finds at the hearing that the hiring agent or construction subcontractor knowingly failed to provide a workers' compensation insurance policy, the executive director or the executive director's designee shall issue a stop-work order effective immediately on the conclusion of the hearing to that hiring agent or construction subcontractor at the construction site at which the executive director or executive director's designee has determined a violation occurred, unless the hiring agent or subcontractor has provided coverage and will continue to do so pursuant to paragraph A. [PL 2009, c. 649, §1 (NEW).]

C. A stop-work order issued pursuant to this subsection remains in effect until the executive director or the executive director's designee issues an order releasing the stop-work order upon finding that the hiring agent or construction subcontractor has come into compliance with the requirements of this subsection and has paid any penalty assessed under section 324, subsection 3 or has entered into a penalty payment agreement with the board. [PL 2009, c. 649, §1 (NEW).]

D. A stop-work order issued pursuant to this subsection against a hiring agent or construction subcontractor applies to any successor firm, corporation or partnership of the hiring agent or construction subcontractor in the same manner as it applies to the hiring agent or construction subcontractor. [PL 2009, c. 649, §1 (NEW).]

E. Any payment or performance bond issued on or in relation to a construction project subject to a stop-work order may not cover any exposure arising out of or during the shutdown of that project. [PL 2009, c. 649, §1 (NEW).]

For purposes of this subsection, a violation is considered knowing if the hiring agent or construction subcontractor has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed; has been notified in writing by the board of the need for workers' compensation insurance; or has had one or more previous violations of the requirement to secure the payment to that hiring agent's or construction subcontractor's employees of the compensation provided for by this Act.
[PL 2009, c. 649, §1 (NEW).]

6. Insurance coverage information for public construction projects. Insurance coverage information regarding construction subcontractors and independent contractors is controlled by this subsection.

A. At the onset of work on any construction project undertaken by the State, the University of Maine System or the Maine Community College System, the general contractor or designated project construction manager, if any, shall provide to the board a list of all construction subcontractors and independent contractors on the job site and a record of the entity to whom that construction subcontractor or independent contractor is directly contracted and by whom that construction subcontractor or independent contractor is insured for workers' compensation purposes. The list must be posted on the board's publicly accessible website and updated as needed. [PL 2011, c. 403, §3 (NEW).]

B. The board and the Department of Administrative and Financial Services, Bureau of General Services shall cooperate and provide notice to each other regarding the letting of state-funded construction projects and any stop-work order, debarment or other action as either may take or issue. [PL 2011, c. 403, §3 (NEW).]

C. This subsection provides minimum disclosure standards regarding construction subcontractors and independent contractors and does not preclude the contracting agency from setting more rigorous standards for construction work under its jurisdiction. [PL 2011, c. 403, §3 (NEW).]

D. If the general contractor or designated project construction manager fails to provide the board with the information required by paragraph A, that person is subject to a fine of not less than $250. [PL 2011, c. 403, §3 (NEW).]

[PL 2011, c. 403, §3 (NEW).]

SECTION HISTORY

PL 2009, c. 452, §5 (NEW). PL 2009, c. 649, §1 (AMD). PL 2011, c. 403, §3 (AMD). PL 2011, c. 643, §9 (AMD). PL 2011, c. 643, §14 (AFF).

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