

Prepared By: Damien Leonard, Esq.  
Office of Legislative Council  
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**WORKERS' COMPENSATION**

Statutory Provision	Alternative 1 (Draft 4.2)	Alternative 2 (Draft 4.2)	Alternative 3 (Draft 4.1)
21 V.S.A. § 625	<p>(a) <del>An</del> Except as provided in subdivisions 601(3) and (14) of this chapter, an employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.</p> <p>(b) The Commissioner may investigate complaints and determine whether the requirements to be an independent contractor set forth in 21 V.S.A. § 601(31) are met. Any person that, for the purpose of avoiding its obligations under this title, improperly classifies an employee as an independent contractor, may, after notice and an opportunity for a hearing, be assessed an administrative penalty of not more than \$5,000.00.</p> <p>(c) Any administrative penalty imposed pursuant to this section may be in addition to other penalties authorized pursuant to chapters 9 and 17 of this title.</p>	<p>(a) <del>An</del> Except as provided in subdivisions 601(3) and (14) of this chapter, an employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.</p> <p>(b) The Commissioner may investigate complaints and determine whether the requirements to be an independent contractor set forth in 21 V.S.A. § 601(31) are met. Any person that, for the purpose of avoiding its obligations under this title, willfully and knowingly misclassifies an employee as an independent contractor, may, after notice and an opportunity for a hearing, be assessed an administrative penalty of not more than \$5,000.00.</p> <p>(c) Any administrative penalty imposed pursuant to this section may be in addition to other penalties authorized pursuant to chapters 9 and 17 of this title.</p>	N/A
21 V.S.A. § 601(3)	<p>(3) “Employer” includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and includes the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is insured, <u>the term</u> “employer” includes the employer’s insurer so far as applicable. A person is not deemed to be an “employer” for the purposes of this chapter as the result of entering into a contract for services or labor with an individual who has knowingly and voluntarily waived coverage of this chapter pursuant to subdivision (14)(F) of this section, <u>or is a corporate officer or L.L.C. member or manager that has filed, and had approved, an exclusion pursuant to subdivision 14(H) of this section and who meets the criteria set forth in that subdivision.</u></p>	<p>(3) “Employer” includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and includes the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is insured, <u>the term</u> “employer” includes the employer’s insurer so far as applicable. A person is not deemed to be an “employer” for the purposes of this chapter as the result of entering into a contract for services or labor with <del>an individual</del> <u>a sole proprietor or partner owner</u>, who has knowingly and voluntarily waived coverage of this chapter pursuant to subdivision (14)(F) of this section, <u>or is a corporate officer or L.L.C. member or manager that has filed, and had approved, an exclusion pursuant to subdivision 14(H) of this section and who meets the criteria set forth in that subdivision.</u></p>	N/A
21 V.S.A. § 601(14)	<p>(14) “Worker” and “employee” means <del>an individual</del> <u>a person</u> who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury</p>	<p>(14) “Worker” and “employee” means <del>an individual</del> <u>a person</u> who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury</p>	N/A

SIDE-BY-SIDE COMPARISON OF ALTERNATIVE SECTIONS IN HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT INDEPENDENT CONTRACTOR BILL

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	<p>shall include a reference to the worker’s dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor’s committee, guardian, or next friend. <del>The term “worker” or “employee” does not include A</del> <u>person who performs services for compensation is presumed to be an employee unless the employing unit demonstrates that the person is one of the following:</u></p>	<p>shall include a reference to the worker’s dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor’s committee, guardian, or next friend. <del>The term “worker” or “employee” does not include A</del> <u>person who performs services for compensation is presumed to be an employee unless the employing unit demonstrates that the person is one of the following:</u></p>	
<p><b>21 V.S.A. § 601(14)(B)</b></p>	<p>(B) An individual engaged in amateur sports, <u>including a referee or official that is paid on a per game or per event basis</u>, even if an employer contributes to the support of such sports.</p>	<p>N/A</p>	<p>N/A</p>
<p><b>21 V.S.A. § 601(14)(F)</b></p>	<p>(F)(i) The sole proprietor or partner owner or partner owners of an unincorporated business provided <u>all of the following are met:</u></p> <p style="padding-left: 20px;">(i)(aa) The individual <u>or partner owner</u> performs work that is distinct and separate from that of the person with whom the individual <del>contracts</del> <u>or partner owner contracts</u>; or</p> <p style="padding-left: 20px;">(bb) <u>the individual or partner owner operates a separate and distinct business from that of the person with whom he or she contracts and is actively registered with the Vermont Secretary of State.</u></p> <p style="padding-left: 20px;"><del>(ii)(II)</del> <u>The individual or partner owner controls the means and manner of the work performed.</u></p> <p style="padding-left: 20px;"><del>(iii)(III)</del> <u>The individual or partner owner holds <del>him</del> <u>him-</u> or herself out as in business for <del>him</del> <u>him-</u> or herself.</u></p> <p style="padding-left: 20px;"><del>(iv)(IV)</del> <u>The individual or partner owner holds <del>him</del> <u>him-</u> or herself out for work for the general public <del>and does not perform work exclusively for or with another person.</del></u></p> <p style="padding-left: 20px;"><del>(v)(V)</del> <u>The individual or partner owner is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</u></p> <p style="padding-left: 20px;"><del>(vi)(VI)</del> <u>The services are performed pursuant to a written agreement or contract between the individual or partner owner and another person, and the written agreement or contract explicitly states that the individual or partner owner is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of</u></p>	<p>(F)(i) <del>The A</del> <u>sole proprietor or partner owner or partner owners of an unincorporated business provided the following conditions are met:</u></p> <p style="padding-left: 20px;"><del>(i)(aa)</del> <u>The individual performs work that is distinct and separate from that of the person with whom the individual contracts or partner owner is an independent contractor and has purchased workers’ compensation coverage for him- or herself; or</u></p> <p style="padding-left: 20px;"><del>(bb)</del> <u>the individual or partner owner is an independent contractor, is actively registered with the Vermont Secretary of State, and elects to file a notice of waiver of the coverage requirements under this chapter that is approved by the Commissioner.</u></p> <p style="padding-left: 20px;"><del>(ii)</del> <u>The individual controls the means and manner of the work performed.</u></p> <p style="padding-left: 20px;"><del>(iii)</del> <u>The individual holds him or herself out as in business for him or herself.</u></p> <p style="padding-left: 20px;"><del>(iv)</del> <u>The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.</u></p> <p style="padding-left: 20px;"><del>(v)</del> <u>The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</u></p> <p style="padding-left: 20px;"><del>(vi)(II)</del> <u>The services are performed pursuant to a written agreement or contract between the individual or partner owner and another person <u>the person who is providing compensation for the services</u>, and the written agreement or contract explicitly states that the individual or partner owner is</u></p>	<p>N/A</p>

SIDE-BY-SIDE COMPARISON OF ALTERNATIVE SECTIONS IN HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT INDEPENDENT CONTRACTOR BILL

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	<p>the individual <u>or partner owner</u> to purchase workers' compensation insurance coverage and the individual's <u>or partner owner's</u> election not to purchase that coverage. However, if the individual <u>or partner owner</u> who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.</p> <p><u>(ii)(I) With the approval of the Commissioner, a sole proprietor or partner owner of an unincorporated business that meets the requirements of subdivision (14)(F)(i) of this section may elect to file a notice of waiver of the coverage requirements of this chapter.</u></p> <p><u>(II) If, after filing a notice of waiver of the coverage requirements of this chapter, the individual or partner owner suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the employer, and in such action the employer shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to subdivision (14)(F)(ii)(I) of this section, who is determined to be an employee of the unincorporated business from claiming workers' compensation benefits under this chapter from the unincorporated business, or from a statutory employer.</u></p> <p><u>(iii) A sole proprietor or partner owner that files a notice of waiver of the coverage requirements of this chapter under subdivision (14)(F)(ii)(I) of this section shall ensure that any other individual hired to perform services for the sole proprietor or partner owner's unincorporated business has workers' compensation coverage.</u></p>	<p>not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual <u>or partner owner</u> to purchase workers' compensation insurance coverage and the individual's <u>or partner owner's</u> election not to purchase that coverage. However, if the individual <u>or partner owner</u> who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.</p> <p><u>(ii) If, after making an election under subdivision (F)(i)(I)(bb) of this section, the individual or partner owner suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to subdivision (F)(i)(I)(bb) of this section, who is determined to be an employee of the unincorporated business from claiming workers' compensation benefits under this chapter from the unincorporated business, or from a statutory employer.</u></p> <p><u>(iii) An individual or partner owner that makes an election under subdivision (F)(i)(I)(bb) of this section shall collect and maintain documentation that any other person hired to perform services for the sole proprietor or partner owner's unincorporated business has workers' compensation coverage, or is otherwise in compliance with the provisions of this chapter.</u></p>	
<p><b>21 V.S.A. § 601(14)(H)</b>  <b>"The term "worker" or "employee" does not include:"</b></p>	<p>(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four <u>corporate executive officers</u> or <u>four L.L.C. managers</u> or members from coverage requirements under this chapter. If all</p>	<p>(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four <u>corporate executive officers</u> or <u>four L.L.C. managers</u> or members from coverage requirements under this chapter. If all</p>	<p>N/A</p>

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officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. ~~If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.~~

(i) A person shall not be deemed to be an "employer" for purposes of this chapter of corporate executive officers or L.L.C. managers or members that are excluded under this subdivision if all of the following are met:

(I) The corporate executive officers or L.L.C. managers or members operate a separate and distinct business from that of the person with whom the corporation or L.L.C. contracts, and the corporation or L.L.C. is actively registered with the Vermont Secretary of State.

(II) The corporation or L.L.C. controls the means and manner of the work performed.

(III) The corporation or L.L.C. holds itself out as in business for itself and performs work for the general public.

(IV) The person that the corporation or L.L.C. contracts with does not treat the corporate executive officers or L.L.C. managers or members as employees for purposes of income or employment taxation in relation to the work performed.

(V) The services are performed pursuant to a written agreement or contract between the corporation or L.L.C. and another person, and the written agreement or contract explicitly states that the corporate executive officers or L.L.C. managers or members are not considered to be employees under this chapter and are working independently. The written contract or agreement shall also include information regarding the right of the corporation or L.L.C. to purchase workers' compensation insurance coverage and of the corporate executive

officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. ~~If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.~~

(i) A person shall not be deemed to be an "employer" for purposes of this chapter of corporate executive officers or L.L.C. managers or members that are excluded under this subdivision if the following conditions are met:

(I) The corporate executive officers or L.L.C. managers or members operate a separate and distinct business that is an independent contractor, is actively registered with the Vermont Secretary of State, and elects to file a corporate officer or L.L.C. member exclusion from the provisions of this chapter.

(II) The services are performed pursuant to a written agreement or contract between the corporation or L.L.C. and the person who is providing compensation for the services, and the written agreement or contract explicitly states that the corporate executive officers or L.L.C. managers or members are not considered to be employees under this chapter and are working independently. The written contract or agreement shall also include information regarding the right of the corporation or L.L.C. to purchase workers' compensation insurance coverage and of the corporate executive officers or the L.L.C. managers or members to elect not to exclude themselves from coverage.

(ii) If, after making an election under this subdivision, the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person

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	<p><u>officers or the L.L.C. managers or members to elect not to exclude themselves from coverage.</u></p> <p><u>(ii) If after making an election under this subdivision, the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the employer, and in such action the employer shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from claiming workers' compensation benefits under this chapter from the corporation or L.L.C., or from a statutory employer.</u></p>	<p><u>who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from claiming workers' compensation benefits under this chapter from the corporation or L.L.C. or from a statutory employer.</u></p> <p><u>(iii) A corporation or L.L.C. whose executive officers, members, or managers make an election under subdivision (14)(H)(i) of this section shall collect and maintain documentation that any other person hired to perform services for the corporation or L.L.C. has workers' compensation coverage, or is otherwise in compliance with this chapter.</u></p>	
<p><b>21 V.S.A. § 601(14)(I)</b></p>	<p><u>(I) An individual who provides services for which he or she receives foster care payments that are specifically excluded from gross income pursuant to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.</u></p>	<p><u>(I) An individual who provides services for which he or she receives foster care payments that are specifically excluded from gross income pursuant to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.</u></p>	<p>N/A</p>
<p><b>21 V.S.A. § 601(14)(J)</b></p>	<p><u>(J) An individual that is a direct seller, provided all of the following are met:</u></p> <p><u>(i) The individual is engaged in the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles in the home or a location other than in a permanent retail establishment. For purposes of this subdivision, "the trade or business of selling or soliciting the sale of consumer products" includes the sale or solicitation of a sale to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.</u></p> <p><u>(ii) Substantially all of the compensation, whether or not received in cash, that the individual receives for the performance of the services described in subdivision (i) of this subdivision (14)(J) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.</u></p> <p><u>(iii) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an</u></p>	<p><u>(J) An individual that is a direct seller, provided all of the following are met:</u></p> <p><u>(i) The individual is engaged in the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles in the home or a location other than in a permanent retail establishment. For purposes of this subdivision, "the trade or business of selling or soliciting the sale of consumer products" includes the sale or solicitation of a sale to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.</u></p> <p><u>(ii) Substantially all of the compensation, whether or not received in cash, that the individual receives for the performance of the services described in subdivision (i) of this subdivision (14)(J) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.</u></p> <p><u>(iii) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an</u></p>	<p>N/A</p>

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	<u>employee for federal and State tax purposes.</u>	<u>employee for federal and State tax purposes.</u>	
<b>21 V.S.A. § 601(31)</b>	N/A	<p><u>(31)(A) “Independent contractor” means a person who meets all of the following:</u></p> <ul style="list-style-type: none"> <li><u>(i) is free from the direction and control of the employing unit, both under the person’s contract of service and in fact;</u></li> <li><u>(ii) controls the means and manner of the work performed;</u></li> <li><u>(iii) operates a separate and distinct business from that of the person with whom it contracts;</u></li> <li><u>(iv) holds itself out as in business for itself;</u></li> <li><u>(v) offers its services to the general public; and</u></li> <li><u>(vi) is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</u></li> </ul> <p><u>(B) An independent contractor shall purchase workers’ compensation coverage for its employees as provided in this chapter.</u></p>	N/A
<b>21 V.S.A. § 707</b>	<p><u>(a) An employing unit shall provide notice to the Commissioner if it hires multiple sole proprietors, partnerships, or single member corporations or L.L.C.s that are excluded from coverage under this chapter pursuant to subdivision 601(14)(F) or (H) of this chapter to perform the same work on a project or jobsite. The employing unit shall submit the notice on a form provided by the Commissioner within 15 business days after hiring the second sole proprietor, partnership, or single member corporation or L.L.C. that is excluded from coverage under this chapter or the commencement of work, whichever is later.</u></p> <p><u>(b) An employing unit that violates the provisions of this section shall be subject to an administrative penalty of not more than \$100.00 for each notice that the employer fails to submit within the required time period.</u></p>	<p><u>(a) An employing unit shall notify the Commissioner if it hires multiple independent contractors that are excluded from coverage under this chapter pursuant to subdivision 601(14)(F) or (H) of this chapter to perform the same work on a project or jobsite. The employing unit shall submit the notice on a form provided by the Commissioner within 15 business days after hiring the second independent contractor that is excluded from coverage under this chapter or the commencement of work, whichever is later.</u></p> <p><u>(b) An employing unit that violates the provisions of this section shall be subject to an administrative penalty of not more than \$100.00 for each notice that the employer fails to submit within the required time period.</u></p>	<u>An employing unit shall provide notice to the Commissioner, on a form provided by the Commissioner, if it hires multiple sole proprietors, partnerships, or single member corporations or L.L.C.s that are excluded from coverage under this chapter pursuant to subdivisions 601(14)(F) or (H) of this chapter to perform the same work on the project or jobsite.</u>

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**Unemployment Compensation**

<b>Statutory Provision</b>	<b>Alternative 1 (Draft 4.2)</b>	<b>Alternative 2 (Draft 4.2)</b>	<b>Alternative 3 (Draft 4.1)</b>
<b>21 V.S.A. § 1301(6)(B)</b>	<p>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that:</p> <p>(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and</p> <p>(ii) Such service is <del>either</del> outside the usual course of the business for which such service is performed, <del>or that such service is performed outside of all the places of business of the enterprise for which such service is performed</del> unless it can be demonstrated that such individual holds him- or herself out to the public as a provider of such service; and</p> <p>(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, and that independently established trade, occupation, profession, or business is actively registered with the Vermont Secretary of State.</p>	<p>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that: <del>the individual is an independent contractor.</del></p> <p><del>(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and</del></p> <p><del>(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and</del></p> <p><del>(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.</del></p>	N/A
<b>21 V.S.A. § 1301(25)</b>	N/A	<p><u>(25) “Independent contractor” means an individual that provides services for compensation and satisfies the following requirements:</u></p> <p><u>(A) the individual has been and will continue to be free from control or direction over the performance of the services provided, both under his or her contract of service and in fact;</u></p> <p><u>(B) the services provided are outside the usual course of the business for which such service is performed or the individual holds him- or herself out to the public as a provider of such services; and</u></p> <p><u>(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business, and that independently established trade, occupation, profession, or business is actively registered with the Vermont Secretary of State.</u></p>	N/A
<b>21 V.S.A. § 1313</b>	<u>(a) An employing unit shall notify the Commissioner if it hires multiple individuals to perform the same services on a</u>	<u>(a) An employing unit shall notify the Commissioner if it hires multiple independent contractors to perform the same</u>	<u>An employing unit shall provide notice to the Commissioner, on a form provided by the Commissioner, if it hires multiple</u>

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	<p><u>project or jobsite and the employing unit believes that the services are not employment pursuant to subdivision 1301(6) of this chapter. The employing unit shall submit the notice on a form provided by the Commissioner within 15 business days after hiring the second such individual or the commencement of work, whichever is later.</u></p> <p><u>(b) An employing unit that violates the provisions of this section shall be subject to an administrative penalty of not more than \$100.00 for each notice that the employing unit fails to submit within the required time period.</u></p>	<p><u>work on a project or jobsite. The notice shall be submitted on a form provided by the Commissioner within 15 business days after hiring the second independent contractor or the commencement of work, whichever is later.</u></p> <p><u>(b) An employing unit that violates the provisions of this section shall be subject to an administrative penalty of not more than \$100.00 for each notice that the employing unit fails to submit within the required time period.</u></p>	<p><u>individuals to perform the same work on a project or jobsite.</u></p>
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