

WORKERS' COMPENSATION

Statutory Provision	H.216	H.331	H.378	H.773
21 V.S.A. § 601(3)	N/A	<p>(3)(A) “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, “employer” includes the employer’s insurer so far as applicable.</p> <p>(B) A person is shall <u>not be</u> deemed to be an “employer” for the purposes of this chapter <u>with respect to the following individuals:</u></p> <p>(i) as the result of entering into a contract for services or labor with an <u>An</u> individual who has knowingly and voluntarily waived coverage of this chapter pursuant to subdivision (14)(F) of this section <u>and has contracted with the person, regardless of whether the services or labor contracted for are a part of, or process in the trade, business, or occupation of the person.</u></p> <p>(ii) <u>An officer, member, or manager of a corporation or limited liability company that has elected to exclude the officer, member, or manager from the coverage requirements under this chapter pursuant to subdivision 14(H) of this section and has contracted with the person, regardless of whether the services or labor contracted for are a part of, or process in the trade, business, or occupation of the person.</u></p>	N/A	<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 LLC member 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>
21 V.S.A. § 601(14)	N/A	N/A	N/A	<p>(14) “Worker” and “employee” means an individual <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 shall include a reference to the worker’s dependents, and any reference</p>

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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Office of Legislative Council

February 10, 2016

				<p>to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. <u>A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the direction and control of the employing unit, both under the person's contract of service and in fact.</u> The term "worker" or "employee" does not include:</p>
<p>21 V.S.A. § 601(14)(F) "The term 'worker' or 'employee' does not include:"</p>	<p>(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided:</p> <p>(i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.</p> <p>(ii) The individual controls the means and manner of the work performed.</p> <p>(iii)(ii) The individual holds him or herself out as in business for him or herself.</p> <p>(iv)(iii) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.</p> <p>(v)(iv) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</p> <p>(vi)(v) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual 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 the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual 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</p>	<p>(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided:</p> <p>(i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.</p> <p>(ii)(i) The individual controls the means and manner of the work performed.</p> <p>(iii)(ii) The individual holds him or herself out as in business for him or herself.</p> <p>(iv)(iii) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.</p> <p>(v)(iv) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</p> <p>(vi)(v) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual 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 the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual 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</p>	<p>(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided:</p> <p>(i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.</p> <p>(ii) The individual controls the means and manner of the work performed.</p> <p>(iii) The individual holds him or herself out as in business for him or herself.</p> <p>(iv) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.</p> <p>(v) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</p> <p>(vi) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual 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 the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual 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</p>	<p>(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided <u>all of the following are met:</u></p> <p>(i) <u>The individual or partner owner performs work that is distinct and separate from that of the person with whom the individual contracts 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>(ii) <u>The individual or partner owner controls the means and manner of the work performed.</u></p> <p>(iii) <u>The individual or partner owner holds him or herself out as in business for him or herself.</u></p> <p>(iv) <u>The individual or partner owner 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>(v) <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>(vi) <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.</u></p>

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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Office of Legislative Council

February 10, 2016

	against either or both parties to the agreement.	against either or both parties to the agreement.	against either or both parties to the agreement unless the sole proprietor or partner notifies the Commissioner that he or she is to be included within the provisions of this chapter; the submission of an insurance contract or an amendment to an insurance contract to elect coverage of the sole proprietor or partner owner shall be considered sufficient notice.	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. (vii) <u>The person with whom the individual or partner owner has contracted has not hired multiple sole proprietors, partnerships, or single member corporations or L.L.C.s to perform the same work on a project or jobsite.</u>
21 V.S.A. § 601(14)(H) "The term "worker" or "employee" does not include:"	N/A	N/A	N/A	(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</u> executive officers or <u>four L.L.C.</u> managers or members from coverage requirements under this chapter. If all 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) <u>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</u>

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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				<p><u>this subdivision if all of the following are met:</u></p> <p><u>(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.</u></p> <p><u>(II) The corporation or L.L.C. controls the means and manner of the work performed.</u></p> <p><u>(III) The corporation or L.L.C. holds itself out as in business for itself, performs work for the general public, and does not work exclusively for or with another person.</u></p> <p><u>(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.</u></p> <p><u>(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 or the L.L.C. managers or members to elect not to exclude themselves from coverage.</u></p> <p><u>(VI) The person with whom the corporation or L.L.C. has contracted has not hired multiple sole proprietors, partnerships, or single member corporations or L.L.C.s to perform the same work on a project or jobsite.</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</u></p>
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SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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February 10, 2016

				<p><u>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>21 V.S.A. § 601(14)(I) “The term “worker” or “employee” does not include:”</p>	<p>N/A</p>	<p>N/A</p>	<p><u>(I) An independent contractor if it can be demonstrated that the independent contractor is free from the essential direction and control of the employer, both under the individual’s contract and in fact, and the employer proves that the individual meets all of the criteria in subdivision (i) and at least two of the criteria in subdivision (ii) of this subdivision (14)(I).</u></p> <p><u>(i) In order for an individual to be an independent contractor, the following criteria must be met:</u></p> <p><u>(I) The individual has the essential right to control the means and progress of the work except as to the final results.</u></p> <p><u>(II) The individual is customarily engaged in an independently established trade, occupation, profession, or business.</u></p> <p><u>(III) The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by him or her to complete the work.</u></p> <p><u>(IV) The individual has the opportunity for profit and loss as a result of the services being performed for the employer.</u></p> <p><u>(V) The individual hires and pays his or her employees, if any, and supervises the details of the employees’ work.</u></p> <p><u>(VI) The individual makes his or her services available to the general public</u></p>	<p>N/A</p>

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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Office of Legislative Council

February 10, 2016

			<p><u>and is able to accept work for entities other than the employer, whether or not he or she chooses to do so.</u></p> <p><u>(ii) In order for an individual to be an independent contractor, at least two of the following criteria must be met:</u></p> <p><u>(I) The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.</u></p> <p><u>(II) The parties have a written contract that defines the relationship and gives the individual contractual rights in the event the contract is terminated by the employer prior to completion of the work.</u></p> <p><u>(III) Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by him or her.</u></p> <p><u>(IV) The work is outside the usual course of business for which the service is performed.</u></p> <p><u>(V) The individual has elected to file taxes as an independent contractor with the federal Internal Revenue Service.</u></p>	
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SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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February 10, 2016

Unemployment Compensation

Statutory Provision	H.216	H.331	H.378	H.773
21 V.S.A. § 1301(6)(B)	N/A	N/A	<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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business they are specifically excluded pursuant to this chapter.</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:</p> <p style="padding-left: 40px;">(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 style="padding-left: 40px;">(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 unless it can be demonstrated that such individual regularly provides such service to multiple businesses and holds himself or herself out to the public as a provider of such service; and</p> <p style="padding-left: 40px;">(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business <u>and that independently established trade, occupation, profession, or business is actively registered with the Vermont Secretary of State.</u></p> <p>(C) <u>Notwithstanding any provision of subdivision (B) of this subdivision (6), multiple individuals performing the same work on a project or job site shall be deemed to be performing services in employment.</u></p>
21 V.S.A. § 1301(6)(C)(xxii)	N/A	N/A	<p>(C) The term “employment” shall not include:</p> <p align="center">* * *</p> <p style="padding-left: 40px;"><u>(xxii) Services performed by an independent contractor if it can be demonstrated that the independent contractor is free from the essential direction and control of the person for whom the services are performed, both under the individual’s contract and in fact, and the person for whom the services are performed proves that the</u></p>	<p>Renumbered as subdivision (D), but otherwise no changes to statutory language.</p>

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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February 10, 2016

individual meets all of the criteria in subdivision (I) and at least two of the criteria in subdivision (II) of this subdivision (6)(C)(xxii).

(I) In order for an individual to be an independent contractor, the following criteria must be met:

(aa) The individual has the essential right to control the means and progress of the work except as to the final results.

(bb) The individual is customarily engaged in an independently established trade, occupation, profession, or business.

(cc) The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by him or her to complete the work.

(dd) The individual has the opportunity for profit and loss as a result of the services being performed.

(ee) The individual hires and pays his or her employees, if any, and supervises the details of the employees' work.

(ff) The individual makes his or her services available to the general public and is able to accept work for entities other than the employer, whether or not he or she chooses to do so.

(II) In order for an individual to be an independent contractor, at least two of the following criteria must be met:

(aa) The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.

(bb) The parties have a written contract that defines the relationship and gives the individual contractual rights in the event the contract is terminated by the person for whom the services are performed prior to completion of the work.

(cc) Payment to the individual is based on factors directly related to the work performed and not solely on the

SIDE-BY-SIDE COMPARISON OF INDEPENDENT CONTRACTOR CLASSIFICATION BILLS: H.216, H.331, H.378, AND H.773

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			<p><u>amount of time expended by him or her.</u></p> <p><u>(dd) The work is outside the usual course of business for which the service is performed.</u></p> <p><u>(ee) The individual has elected to file taxes as an independent contractor with the federal Internal Revenue Service.</u></p>	
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