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Worker Classification

June 2, 2016

Presentation for the Vermont League of Cities and Towns
Human Resources Employment Law Workshop



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Outline

- Employee?
- Why does it matter?
- Loss control of non-employees?
- Resolution
- Documentation
- Outcome



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Employee?

No cross cutting definition of an employee.

- Different federal and state agencies have different definitions and requirements for multiple purposes
 - Payroll Taxes
 - Health Care
 - Workers Comp
 - Unemployment
- Town has
 - 101 people who are employees
 - 170 people who are employees for some purposes
 - Elected officials and volunteers with stipends
 - 39 for none



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Why does it matter?

- **Budget Issue: Workers Comp Rates**
 - + **50% or additional \$100,000 annually**
- Told by our insurer, that we would have to pay workers comp on \$250,000 worth of non-corporation contractors – 41 individuals/organizations
- Rates are based on \$100 of payroll ranging from
 - 50 cents per admin worker
 - \$12 per ambulance worker
- Cost would have been additional \$15,000 annually based on \$6





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Why does it matter?

- **\$15,000 not necessarily significant considering**
 - 15M Annual Budget
 - Property Taxes/Fees/Utilities
 - Only an additional 5% increase in workers comp
- **Began work on increased workers comp loss control approaches for employees**
 - Employee Selection/Hiring
 - Training
 - Observation/Feedback/Evaluation
 - Equipment Use
 - Accountability
 - Injury Reporting
 - Treatment/Light Duty/Recovery





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Loss control of non-employees?

Key loss control issues

- Employee Selection/Hiring
- Training
- Observation/Feedback/Evaluation
- Equipment Use
- Accountability
- Injury Reporting
- Treatment//Light Duty/Recovery



Little ability to control workers comp losses for 41 non-employee individuals and entities

- Likely to disproportionately increase risk
- Further increase our negative rate modification



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Resolution



- Discussed with VLCT PACIF
- Called our attorney Brian Monaghan
- Engaged with VT DOL attorney Steve Monaghan
- Became more aware of Classification Framework
 - Control and Nature of Business Tests
 - Other indicia of employment status for workers comp
- Agreed with DOL that
 - \$84,000 in attorneys, performers, and specialized non-manual labor consultants for which we had specific documentation not subject to coverage
 - \$37,000 in animal control & cemetery mowing subject to overage.
- Arranged for uninsured cemetery mowing individual to become covered by insured cemetery mowing firm



Documentation For Staff



Avoid the Issue of Workers Compensation

- Carefully distinguish and document purchase of products vs. services
- When possible hire vendors with workers comp for all employees, including owners
- Consider having Town staff do the work if qualified, even on OT
 - It may save money considering risk of uninsured contractors
- Consider paying 15% more for firms with workers comp for all employees

OR Develop documentation for Workers Comp Audit

- We warn staff this takes at least four hours



Documentation For Audit



For remaining 35 individuals and non-corporate entities

- Business filings with secretary of state
- Picture of business sign/web page/advertisement/business phone listing/brochure proving available for hire by public
- Hold Harmless Agreements
- Non Employee Work agreements
- Control Test
- Nature of Business Test
- Bid Specs/RFP/Quote Documents issued by Town
- Bid/Quote/RFP Response to above from vendors
- Contracts with vendors
- Form 29 signed by contractor and State DOL (for corporate/LLC officers)
- Vendor Insurance Certificates, even if they don't have workers comp
- Paragraph describing nature of work documenting difference from employees who may have similar work
- 1099's



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Engagement

Engaged the legislative process with

- VLCT
- Lake Champlain Chamber
- Legislative Delegation

Strongly supported H.773 proposed by House Commerce



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Outcome

More work but

- We paid for fewer non-employees in our workers comp audit
- Fewer liabilities to our workers comp rate
- Fewer liabilities to our insurance carrier/member organization
- Good understanding of why improved legislation is needed



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Thank You!