



# Workers' Compensation

## NEVADA EMPLOYER COVERAGE REQUIREMENTS

**Caution: The information below is provided as a public service and is not intended to be legal advice. If you believe the provisions discussed do not cover you, you may want to consult with an attorney experienced in industrial insurance.**

### **Introduction**

The statutes are clear on the issue of employer coverage. Unless excluded by statute, "...Every person, firm, voluntary association and private corporation, including any public service corporation, which has in service any person under a contract of hire" needs coverage. ([NRS 616B.612](#))

The information below is not meant to cover every situation. Many of these concepts have been litigated and have been addressed by district courts and the Nevada Supreme Court. In most cases, the definitions presented here have been the key to decisions regarding when an employer is required to have coverage.

### **Definitions**

A review of some of the definitions found in Nevada Statutes is appropriate. [NRS 616A.105](#) broadly defines an employee as:

**"Employee" and "worker" defined.** "Employee" and "worker" are used interchangeably in chapters 616A to 616D, inclusive, of NRS and mean every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and include, but not exclusively:

1. Aliens and minors.
2. All elected and appointed paid public officers.
3. Members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay.
4. Musicians providing music for hire, including members of local supporting bands and orchestras commonly known as house bands..."

Note: **NRS 616A.115 through 225** have other specific clarifications to the employee definition.

### **Exclusions:**

**NRS 616A.110 "Employee": Persons excluded.** "Employee" excludes:

1. Any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his or her employer.
2. Any person engaged as a theatrical or stage performer or in an exhibition.
3. Musicians when their services are merely casual in nature and not lasting more than 2 consecutive days, and not recurring for the same employer, as in wedding receptions, private parties and similar miscellaneous engagements.

4. Any person engaged in household domestic service, farm, dairy, agricultural or horticultural labor, or in stock or poultry raising, except as otherwise provided in chapters [616A to 616D](#), inclusive, of NRS.
5. Any person performing services as a voluntary ski patroller who receives no compensation for his or her services other than meals, lodging, or use of the ski tow or lift facilities.
6. Any person who performs services as a sports official for a nominal fee at a sporting event that is amateur, intercollegiate or interscholastic and is sponsored by a public agency, public entity or private, nonprofit organization. As used in this subsection, “sports official” includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sporting event.
7. Any clergy, rabbi or lay reader in the service of a church, or any person occupying a similar position with respect to any other religion.
8. Any real estate broker, broker-salesperson or salesperson licensed pursuant to [chapter 645](#) of NRS.
9. Any person who:
  - (a) Directly sells or solicits the sale of products, in person or by telephone:
    - (1) On the basis of a deposit, commission, purchase for resale or similar arrangement specified by the Administrator by regulation, if the products are to be resold to another person in his or her home or place other than a retail store; or
    - (2) To another person from his or her home or place other than a retail store;
  - (b) Receives compensation or remuneration based on sales to customers rather than for the number of hours that the person works; and
  - (c) Performs pursuant to a written agreement with the person for whom the services are performed which provides that the person is not an employee for the purposes of this chapter.

Other exceptions can be found in [NRS 616B.606](#):

**Real estate brokers and salespersons not employers under certain circumstances.** Any person licensed pursuant to the provisions of [chapter 645 of NRS](#) who engages an independent contractor to maintain or repair property on behalf of an individual property owner or an association of property owners is not a statutory employer for the purposes of chapters 616A to 616D, inclusive, of NRS.

## **Contractors (Licensed or not)**

**Another consideration is whether the employer is a licensed contractor as defined by NRS 624. If you are a licensed contractor, you should know that you may be determined – as a matter of law – to be the employer of independent contractors, subcontractors, and their employees for purposes of providing industrial insurance coverage.**

**This result stems from NRS 616A.210, which states:**

**“...subcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor for purposes of [the Nevada Industrial Insurance Act (the “Act”)] ...”**

**Licensed contractors need to be wary because the Act has a broad definition of principal contractor:**

**NRS 616A.285 “Principal contractor” defined. “Principal contractor” means a person who:**

1. Coordinates all the work on an entire project;
2. Contracts to complete an entire project;
3. Contracts for the services of any subcontractor or independent contractor; or
4. Is responsible for payment to any contracted subcontractors or independent contractors.

If you meet any one of the above criteria, you are a “principal contractor.” You are subject to monetary penalties, criminal prosecution, and/or being ordered to shut your business down if industrial insurance coverage is not provided for your subcontractors, independent contractors, and their employees. You, your subcontractor, or independent contractor must provide this coverage. You will be held responsible if no coverage exists.

In addition, if one of the employees – that is, an employee of a subcontractor or an independent contractor – has a work-related injury and the employer has not secured industrial insurance, the principal contractor will be responsible for the actual cost of the claim, plus administrative fees. See [NRS 616C.220](#).

If you are **not a licensed contractor**, the exemption “independent enterprise” may apply: NRS 616B.603 states:

#### **Independent enterprises**

1. A person is not an employer for the purposes of chapters 616A to 616D, inclusive, of NRS if:
  - (a) The person enters into a contract with another person or business which is an independent enterprise; and
  - (b) The person is **not in the same trade, business, profession, or occupation** as the independent enterprise.
2. As used in this section, “independent enterprise” means a person who holds himself or herself out as being engaged in a separate business and:
  - (a) Holds a business or occupational license in his or her own name; or
  - (b) Owns, rents or leases property used in furtherance of the business.
3. The provisions of this section do not apply to:
  - (a) A principal contractor who is licensed pursuant to [chapter 624 of NRS](#).
  - (b) A real estate broker who has a broker-salesperson or salesperson associated with the real estate broker pursuant to [NRS 645.520](#). (Emphasis added in 1, (b).)

In order to not be deemed the employer under the “independent enterprise exemption,” 1.) You must not be “in the same trade, business, profession or occupation” as the person or business with whom you contract. And 2.) The person or business with whom you contract must be an independent enterprise. Otherwise, workers’ compensation coverage is required.

Several questions arise regarding “sole proprietors” and whether they can reject coverage. [NRS 616A.310](#) defines “Sole proprietor” as “a self-employed owner of an unincorporated business and includes working partners and members of working associations. Coverage remains in effect only if the sole proprietor remains a domiciliary of Nevada.” If the sole proprietor is involved as a “principal contractor, subcontractor, etc.” described above that requires coverage, the sole proprietor must still be

covered and/or provide coverage for others. Also, no statutes prohibit principal contractors from requiring that all subcontractors carry workers' compensation coverage, including sole proprietors.

Questions arise about **when a contractor is not responsible** for workers' compensation for an independent contractor. In the case of construction, the principal contractor is almost always responsible for coverage. The principal contractor can, however, require proof of coverage from subcontractors.

**In the case of non-construction contractors, [NRS 616B.639](#) describes their liability this way:**

**Limitation of liability of principal contractor for industrial injury to independent contractor or employee of independent contractor.**

1. A principal contractor is not liable for the payment of compensation for any industrial injury to any independent contractor or any employee of an independent contractor if:

(a) The contract between the principal contractor and the independent contractor is in writing and the contract provides that the independent contractor agrees to maintain coverage for industrial insurance pursuant to chapters 616A to 616D, inclusive, of NRS;

(b) Proof of such coverage is provided to the principal contractor;

(c) The principal contractor is not engaged in any construction project; and

(d) The independent contractor is **not in the same trade, business, profession or occupation as the principal contractor**. Emphasis added in 1, (d).

Again, it must be kept in mind that the hired entity must not be in the same trade, business, profession, or occupation. Otherwise, the principal contractor is responsible for the failure to provide workers' compensation coverage if the independent contractor is not covered.

## **Rejection of Coverage**

There are instances where an officer or manager of a "quasi-public or private corporation or limited liability company" that requires insurance can reject coverage by the company's workers' compensation insurer. These instances are covered in [NRS 616B.624](#) and the rejection must be in writing to the company and the insurer, and the rejection may later be rescinded in writing.

## **Conclusion**

The general answer to questions about employer coverage requirements is, unless excluded by statute, "...Every person, firm, voluntary association and private corporation...which has in service any person under a contract of hire," needs coverage. If you are seeking legal advice on the above provisions, you should contact an attorney familiar with industrial insurance.