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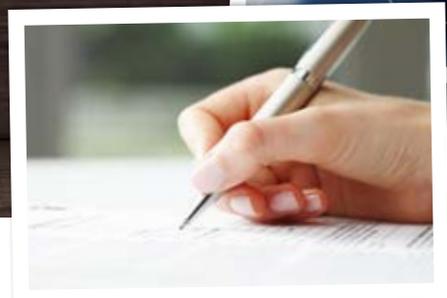
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WORKERS' COMPENSATION

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'TIS THE SEASON – HB 79 ALASKA'S 2018 WORKERS' COMPENSATION LEGISLATION

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Here in Alaska and across the country the leaves are falling, temperatures are dropping, and there is no hiding from pumpkin spice. This means it's time to pull out the sweaters, ensure the skis are waxed and sharpened, and of course, prepare for Alaska's 2019 legislative season!

Okay, so maybe your fall list looks a bit different. Nonetheless, before we spend the next few weeks gorging on holiday treats and fitting parties into the schedule, let's take a minute to understand how last year's workers' compensation legislation will affect your business and what you have to look forward to down the road.

House Bill 79 – Omnibus Workers' Compensation is what we are talking about. This bill was introduced by the governor's office and should not be confused with SB 112, which was a much more comprehensive reform bill. In the 14 pages of this legislation, signed into law on August 24, 2018, our legislators modified 29 sections. The major changes include providing a detailed definition of an independent contractor,

allowing the continued use of pre-employment health questionnaires, creating a legislative working group to analyze the Alaska workers' compensation system, and refining who is considered an employee in an LLC. Along with these important details, the bill also provides updated language, bringing the law into the digital age, ending the Second Injury Fund (SIF), and streamlining filing requirements.

Now, let's walk through the major updates:

No More SIF: This fund was set up to offset the potential increased liability of workers' compensation claims for employers who hired workers with pre-existing physical conditions. Many states have these funds. If after 104 weeks of work-related injury disability the injured worker was still being paid time-loss, and the work injury was related to a pre-existing condition that was present and documented by the employer prior to the work injury, then the SIF would pay time-loss to the injured worker for the remainder of that claim. Now, the employer is responsible for all time-loss payments due under workers' compensation claims.

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Pre-employment Health Questionnaires: AS 23.30.247 allows employers to mandate a post job offer health questionnaire as long as it is for the sole purpose of “determin[ing] whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.” This type of questionnaire can be a very valuable piece of information for not only ensuring you are not putting potential employees in harm’s way, but also providing you with some understanding of previous injuries that could come into play should that employee reinjure themselves during their employment with you. HB 79 makes it clear that, while health questionnaires have often been a tool to document pre-existing physical conditions for SIF purposes, and even though the SIF has been dismantled, health questionnaires are still allowed.

Independent Contractors: AS 23.30.230 now provides a detailed definition of what is considered an “independent contractor” under the Workers’ Compensation Act (Act), and excludes those that fit the new definition from the requirements of the Act (i.e. requiring workers’ compensation coverage). This provides much needed clarity and should reduce litigation for employers who utilize the services of “independent contractors” in knowing whether those individuals should be considered “employees” for workers’ compensation purposes. The definition is very detailed and any employer who works with independent contractors should carefully read pages 9-11 of [HB79](#). What this new definition does **not** do is change the NCCI (National Committee on Compensation Insurance) rules for auditing workers’ compensation payroll. Those individuals who meet the new “independent contractor” definition may still cause you to incur workers’ compensation payroll liability. It is also important to note that the only protection against workers’

compensation claims from your subcontractors becoming general liability claims for you is to require them to have workers’ compensation coverage in place, even if they are exempt under AS 23.30.230. An experienced insurance consultant can assist you in ensuring you are protecting your company from these so-called “action over” claims.

LLC Employee Status: AS 23.30.240 had previously excluded all members of an LLC as being considered employees. The Act now requires a member to own at least 10 percent of the LLC in order to not be considered an employee, and not require workers’ compensation coverage for that individual. So check your ownership agreements and make sure anyone with less than 10 percent ownership is being covered under your workers’ compensation policy as an employee. Any business may still elect to cover LLC members (persons) under workers’ compensation regardless of ownership amount.

Legislative Working Group: What HB 79 did **not** do, was meaningfully reform the Alaska Workers’ Compensation Act. One of the compromises of the session was to create a working group to address the need for more comprehensive reform. This group was able to meet only a single time due to this bill not being signed into law until nearly September. A report from the working group, including proposed legislation, was due on December 1, 2018.

If you still have questions about the new legislation, do not hesitate to reach out to an experienced insurance consultant for more information. Now that we understand where the Alaska Workers’ Compensation Act stands, go forth and enjoy those cookies, hams, and relatives while we anxiously await the 2019 legislative session.