

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Office of Labor Law Enforcement

Statutory Authority: 19 Delaware Code, Section 3511(e) (19 Del.C. §3511(e))

19 DE Admin.Code 1327

PROPOSED

PUBLIC NOTICE

1327 Notice of Independent Contractor or Exempt Person Status

The Delaware Department of Labor, Division of Industrial Affairs, Office of Labor Law Enforcement gives notice that it has created a form for employer to complete which contains guidelines of the notice required to be provided to an individual of their classification as either an independent contractor or an exempt person. The Office of Labor Law Enforcement will receive written public comment as to the notice form beginning Friday, October 1, 2010 and ending on Thursday, October 31, 2010, at the Delaware Department of Labor, 225 Corporate Blvd., Suite 104, Newark, Delaware 19702.

The Office of Labor Law Enforcement proposes to adopt the Notice of Independent Contractor or Exempt Person Status form as presented in this notice. The proposed form is published in the Delaware Register of Regulations. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Francis Chudzik, Supervisor in the Office of Labor Law Enforcement at (302) 451-3401. Persons may submit written comment to the Office of Labor Law Enforcement c/o Francis Chudzik at the address and for the time period set forth above.

1327 Notice of Independent Contractor or Exempt Person Status

The classification of an individual as an independent contractor or exempt employee has significant implications. 19 Del. C. § 3503 sets forth the acts which are prohibited. Specifically that:

(a) An employer shall not improperly classify an individual who performs work for remuneration provided by an employer as an independent contractor.

(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined in subsection (c) of this section, but the employer has not classified the individual as an employee.

(c) An "employer-employee" relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Department the employer demonstrates that the individual is an exempt person or independent contractor.

(d) A person shall not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this section.

(e) A person shall not knowingly conspire with, aid and abet, assist, advise, or facilitate an employer with the intent of violating the provisions of this chapter.

Further, in the event that any employer is found to violate 19 **Del.C.** §3503, the penalties for such violation are set forth in 19 **Del.C.** §3505, which states in pertinent part that:

(a) Any employer who violates or fails to comply with § 3503 of this title or any regulation published thereunder shall be deemed in violation of § 3503 of this title, and shall be subject to a civil penalty of not less than \$1,000, and not more than \$5,000, for each such violation. Each employee who is not properly classified in violation of § 3503 of this title shall be considered a separate violation for purposes of this section.

Additionally, the failure to provide this written notice shall be Evidence of a knowing violation by the employer of 19 **Del.C.** §3503 and the employer shall be liable for an administrative penalty of \$500 for each individual that the

