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Changes to Workers' Compensation Statutes Relax Penalties on Struggling Small Businesses in North Carolina

This summer, the North Carolina legislature enacted new legislation to lessen the burden small businesses faced for first time violations of the Workers' Compensation Act. Under North Carolina law, any business which employs three or more employees is required to carry workers' compensation insurance in order to protect employees who are injured on the job. Starting in 2012, the North Carolina Industrial Commission began to crack down on employers who did not have, or let lapse, their workers' compensation insurance policies. Despite the N.C. Industrial Commission's admirable intentions in making sure employers were providing workers' compensation insurance for their employees, the crackdown had significant financial consequences on many small businesses around the state.

Under the Old Statutory Regime, Small Businesses Faced Substantial Fines for First Time Offenses

Under the previous version of N.C. Gen. Stat. § 97-94, many family-owned small businesses – who were often unaware that owners and part-time employees had to be included when counting employees for workers' compensation purposes – suddenly found themselves facing significant penalties, despite never having an employee injured on the job or knowing they were in violation of the statute. The old law stated that employers could be fined between

\$50.00 to \$100.00 per day during the time period in which the employer was not carrying workers' compensation insurance. The statute also had no cap on how far back the Commission could look in levying penalties. Faced with such substantial fines, many of these business were forced to choose between hiring legal counsel to defend them before the Commission, paying the fines, or shutting down the business altogether.

The North Carolina Legislature Changes the Statute to Lessen the Fines on First Time Offenders

This summer, the North Carolina Legislature enacted several important changes to the law which reduced the fines for first time offenders, while also allowing the Industrial Commission flexibility to pursue repeat offenders with vigorous enforcement. Of note, the law implemented a three-year cap on how far back the Commission could impose fines. Additionally, the new law lowered the minimum penalty from \$50.00 to \$20.00 per day, while maintaining the maximum penalty ceiling at \$100.00.

Most importantly, the new law created an alternative penalty structure for employers who have not previously violated the workers' compensation statute. Under this alternative regime, an employer who receives a penalty assessment from the Commission for failure to carry workers' compensation insurance may seek additional review of the penalty assessment. In connection with the request, the penalized employer may submit (1) evidence to the Commission that it has subsequently secured a workers' compensation policy, and (2) the employer's payroll records for the period of non-compliance. The Commission will then consider a reduction of the fine that takes into consideration the per employee cost of the current policy and the average number of employees during the non-compliance period.

The Impact of the New Law on Small Businesses Facing Their First Penalty

While this alternative regime may sound complicated at first glance, the new statute allows for first-time violators who request a review of their penalty assessment to potentially obtain a lower penalty than would otherwise be assessed. Through this new version of N.C. Gen. Stat. § 97-94, the Industrial Commission has more flexibility to work with first-time violators to promote compliance with North Carolina's workers' compensation laws by accepting more modest initial fines, while also retaining the threat of higher fines for repeat offenders in order to promote a policy of deterrence.

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