

Don't Forget to Verify Your Statutory Employer Exposures Before Filing the Employers' Payroll Declaration of the Puerto Rico State Insurance Fund Corporation

Since the employer's payroll declaration must be filed with the Puerto Rico State Insurance Fund Corporation ("CFSE" for its Spanish acronym) by July 20th, it is important to review the concept of "statutory employer" for these purposes and some of its consequences.

DEFINITION

Article 17 of the Workmen's Compensation Act provides that every insured employer, when filing its annual payroll declaration, must include the salaries paid to all workers and employees that have been working, or will be working, or under an independent contractor or subcontractor arrangement with such employer, and every fee or tax assessed will be based on the employer's actual payroll which shall include all workers previously mentioned.

Under the above mentioned provisions an employer may be treated as a "statutory employer" of the employees or workers used by an independent contractor or subcontractor in cases where the latter is an uninsured employer before the CFSE.

APPLICABILITY AND POSSIBLE CONSEQUENCES

Every employer, under the provisions of the above mentioned Article 17, has the obligation to include on its annual payroll declaration all compensation paid to a worker by means of an independent contractor or a subcontractor arrangement unless the latter is an insured employer before the CFSE.

When the "statutory employer's provisions" apply, the owner of a determined job or construction work will be required to

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insure the workers employed by an independent contractor or a subcontractor when such independent contractor or subcontractor is not an insured employer before the CFSE. Therefore, to avoid or minimize these "statutory employer's provisions", all business (employers) should review the annual payroll declarations when using independent contractors or subcontractors on certain construction or demolition jobs and even on jobs related to the installation of certain machinery and equipment.

The "statutory employer" concept may also be applicable when using the "independent contractor" business model for certain professional services contracts.

On the other hand, if the independent contractor or subcontractor has a valid insurance policy before the CFSE, the owner of the construction or installation work may not need to include the compensation paid to the workers or employees used by such independent contractor or subcontractor depending on the locations and risks included on such policy, among other factors.

SUMMARY

The obligation required by law as a "statutory employer" of insuring the workers or employees that an independent contractor or subcontractor uses to perform a service when the latter is an uninsured employer, is to provide insurance to such workers or employees regardless of the identity of the payer. The

inclusion of these workers and employees within a policy before the CFSE, together with the compliance of the required payment, provides protection to the employer/statutory employer against a claim for damages (a tort lawsuit) by the employees or by the CFSE.

At Zaragoza & Alvarado LLP, we have specialized professionals to handle most of the employers' concerns when dealing with CFSE matters including the applicability of the "statutory employer" concept and the risks included on a policy.

Please contact us to answer any query regarding the filing and payment of the employers' payroll declaration any other matter in connection with the CFSE.

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