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# Vermont Department of Labor, Program Overview

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# *Topics Covered*

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Employee vs. Independent Contractor

Unemployment Insurance

Workers' Compensation

Wage and Hour Program



# *Employee vs. Independent Contractor*

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**ABC Test** – all elements must be met for an individual to be considered an independent contractor

A) Individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact.

- Individual bids for the job and is paid by the job
- Individual completes job with no direction, supervision, or set hours

B) Service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed.

- Individual does work which none of your employees does and for which you do not advertise
- Individual does all work at their own facility

C) Individual is customarily engaged in an independently established trade, occupation, profession or business.

- Individual has employees of their own
- Individual advertises their business services to the general public or is registered with VT Secretary of State

# *Employee vs. Independent Contractor*

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Each program has a slightly different definition of employee, but they are mostly different ways to explain the ABC Test:

Wages and Medium of Payment – ABC Test – 21 V.S.A. § 341

Minimum Wage - Any individual employed or permitted to work by an employer with several exceptions. 21 V.S.A. § 383

Workers' Compensation - An individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer with exceptions. 21 V.S.A. § 601(14).

Unemployment Insurance – ABC Test – 21 V.S.A. § 1301(6)(B)

# *Unemployment Insurance*

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21 V.S.A. § 1301-1389

System designed to partially replace lost income due to job lost through no fault of the employee until they can find new employment.

Process:

- - Claim
- - Adjudication
- - Appeal
  - Administrative Law Judge
  - Employment Security Board
  - Vermont Supreme Court

# *UI Employer Obligations*

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- Report payroll and employees quarterly
  - Penalties for failure
- Pay UI Tax based on experience rating
  - Taxes go into UI trust
- Inform employees about program
- Cooperate with Department when investigating/adjudicating
  - Provide documentation

# UI Standards

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- Job Loss - eligible
  - Termination, not Voluntary Quit (VQ)
    - § VQ reasonable under circumstances
  - Termination,
    - § Misconduct - ineligible time
    - § Gross misconduct - ineligible time
- Misconduct
  - Substantial disregard of the employer's interest, either willful or culpably negligent
  - Clear employer policy on issues central to analysis
- Many other fact patterns not necessarily controllable by employer

# Workers' Compensation

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21 V.S.A. §§ 601-712

- Mandatory for all employers
- Intended to provide for employees a speedy, no-fault remedy and limited, determined liability for employers.
- Statutory Benefits
  - An injured worker may be entitled to one or more of these specific benefits:
    - Medical care/treatment that is reasonable and necessary to treat injury
    - Lost time if disabled due to work injury; roughly 2/3 of usual work wages
    - Permanent impairment only if injury results in permanent impairment; per AMA Guides to the Evaluation of Permanent Impairment
    - Vocational rehabilitation if unable to return to suitable employment
    - Death benefits if evidence supports the death arose due to work injury



## *What is a Work Injury?*

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- A work injury is an injury that arises out of and in the course of employment. It may be an injury, or an occupational disease and it may occur instantaneously or over time.

# *Workers' Compensation Obligations and Rights*

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- Employer
  - Maintain Workers' Compensation Insurance
  - Make First Report of Injury
  - Cooperate with VDOL
  - Right to Insurers' Claim and Investigation Documents
  
- Employee
  - Statutory Benefits
    - Medical care/treatment that is reasonable and necessary to treat injury
    - Lost time if disabled due to work injury; roughly 2/3 of usual work wages
    - Permanent impairment only if injury results in permanent impairment; per AMA Guides to the Evaluation of Permanent Impairment
    - Vocational rehabilitation if unable to return to suitable employment
    - Death benefits if evidence supports the death arose due to work injury

# *Most Common Injuries*

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Eyes

Hands

Back

## *Best Prevention – Safety Practices*

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Providing appropriate training and developing and implementing safety protocols and which are used consistently can reduce work injuries, thus helping to keep insurance premiums down. If you would like a free safety and health consultation, please contact Project WorkSAFE at 1-888-723-3937 (888-SAFE-YES).

Work injuries can affect employer's safety record and experience rating for 3 years

# *Wage and Hour*

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## Fair Labor Standards Act – Federal

- 29 U.S.C. §§ 201-219

## Vermont Wage Law

- 21 V.S.A. §§ 301-397
- 21 V.S.A. §§ 430-474

# *Vermont Wage and Hour Enforcement*

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## Practically Enforces

- Minimum Wage
- Overtime
- Child Labor
- Leave
- Other

*So what?*

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What happens if I don't comply?

- Fines
- Prohibited from employing
- Private Right of Action

*Any Questions?*

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