



## **BULLETIN TO MEMBER ENTITIES**

### **INDEPENDENT CONTRACTORS**

#### *Work Comp Affidavit of Exempt Status*

The SDML Workers' Compensation Fund has always recommended that our members should require all independent contractors to provide proof of workers' compensation insurance coverage before performing work for their Entity. The reason is to protect your Entity from a potential work comp claim.

Effective July 1, 2015, SDCL 62-1-19-22 allows some independent contractors the option to provide an Affidavit of Exempt Status to your Entity in lieu of carrying Workers' Compensation coverage. This only applies to independent contractors who meet the following criteria:

1. They are a sole proprietor.  
(Not incorporated and not an employee of your Entity)
2. They do not have employees.  
(This includes paid temporary help from family, friends or any other person)
3. They contract directly with your Entity.  
(There is no General Contractor for the project)

Here is how it works. Prior to work beginning on a project, the Affidavit must be signed and notarized by both the Entity and the Independent Contractor. The Affidavit requires that the contractor complete the Exempt Status Fact Sheet and attach it to the Affidavit.

If the contractor would bring any employee to the job, including temporary, seasonal, part-time, a family member or friend, this Affidavit may not protect the Entity, therefore, the contractor would need to carry Workers' Compensation coverage and provide proof that coverage is in force.

Please keep in mind that per SDCL 62-1-22, you are not required to accept an Affidavit of Exempt Status as a substitute for a certificate of workers' compensation coverage. The best protection for your Entity is to require all independent contractors, including sole proprietors, to carry workers' compensation insurance coverage and provide a certificate as proof that the coverage is in force.

A copy of this bulletin, the Exempt Status Fact Sheet and the Affidavit can be found through a link on our website at [www.sdmlwcfund.com](http://www.sdmlwcfund.com).

**As with all legal matters, please consult legal counsel before entering into any agreements.**

*4901 S. Isabel Place, Suite 110, Sioux Falls, SD 57018*

*Telephone 800-233-9073 – Fax 605-275-6193 – Email: [info@sdmlwcfund.com](mailto:info@sdmlwcfund.com)*