

ARTICLE 47:03

WORKERS' COMPENSATION

Chapter

- 47:03:01 Workers' compensation hearings.
- 47:03:02 Workers' compensation insurance.
- 47:03:03 Safety in the workplace.
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- 47:03:10 Independent contractor affidavit of exempt status.

Chapter 47:03:10

INDEPENDENT CONTRACTOR AFFIDAVIT OF EXEMPT STATUS

Section

47:03:10:01	Method for completing affidavit of exempt status.
47:03:10:02	Filing of Affidavit of Exempt Status.
47:03:10:03	Applicability of affidavit of exempt status.
Appendix A	Affidavit of Exempt Status.
Appendix B	Exempt Status Fact Sheet.

47:03:10:01. Method for completing affidavit of exempt status. If an independent contractor elects to complete the affidavit of exempt status as provided in Appendix A, the following are applicable:

- (1) The affidavit of exempt status and the exempt status fact sheet attachment, as provided in Appendix B, must be completed before beginning work on the project specified in the affidavit for the general contractor;
- (2) Both the independent contractor and the general contractor shall sign the affidavit of exempt status; and
- (3) A copy of the completed affidavit of exempt status must be provided to the independent contractor and the general contractor.

Source:

General Authority: SDCL 62-1-20.

Law Implemented: SDCL 62-1-20.

47:03:10:02. Filing of affidavit of exempt status. If the affidavit of exempt status and the exempt status fact sheet is completed, the general contractor shall provide copies to the general contractor's workers' compensation insurance carrier.

Source:

General Authority: SDCL 62-1-20.

Law Implemented: SDCL 62-1-20.

47:03:10:03. Applicability of affidavit of exempt status. The affidavit of exempt status may not be executed by an owner-operator, a person deemed an employee, or a person deemed an employer by Title 62.

Source:

General Authority: SDCL 62-1-20.

Law Implemented: SDCL 62-1-20.

DEPARTMENT OF LABOR AND REGULATION

DIVISION OF INSURANCE

AFFIDAVIT OF EXEMPT STATUS

Chapter 47:03:10

APPENDIX A

SEE: § 47:03:10:01

Source:

APPENDIX A

STATE OF SOUTH DAKOTA)

) SS

AFFIDAVIT OF EXEMPT STATUS

COUNTY OF _____)

I state under oath as follows:

1. I, _____, operating as _____,
 (Independent Contractor) (Independent Contractor’s Business Name)
 have agreed to provide services for _____ during calendar year _____.
 (General Contractor) (Year)

2. I have read, signed, and attached the Exempt Status Fact Sheet and understand that an Independent Contractor is one who engages to perform certain services for another, according to his own manner and method, free from control and direction of the contractor in all matters connected with the performance of the service, except as to the result or product of the work.

3. I understand that based upon the representations in this Affidavit of Exempt Status that I have signed, I am requesting that the Contractor identified above consider my business to be that of an independent contractor; that I am not an employee under the Workers’ Compensation Act and the policy issued by _____.
 (General Contractor’s Insurance Carrier)

4. I am an independent contractor, not an employee of the contractor, and I do not want workers’ compensation insurance.

5. I am not an employer for the purposes of the Workers’ Compensation Act.

6. I have read, signed, and attached the Exempt Status Fact Sheet describing what an Independent Contractor is and the information provided is not the result of force, threats, coercion, compulsion, or duress.

7. I understand that the execution of this affidavit shall establish a rebuttable presumption that I am not an employee for purposes of the Workers' Compensation Act.
8. I understand that by signing this affidavit I will not be eligible for compensation under the South Dakota Workers' Compensation Law.
9. I understand the execution of this affidavit does not affect the rights or coverage of any employee of the individual executing the affidavit.
10. I understand that soliciting or providing false information on this affidavit with actual knowledge is a Class 2 misdemeanor.

Independent Contractor Signature

Date

Independent Contractor Name

Title

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public-South Dakota
(Seal)

My commission expires: _____.

General Contractor Signature

Date

General Contractor Name

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public-South Dakota

(Seal)

My commission expires: _____.

DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE
FORM OF EXEMPT STATUS FACT SHEET ATTACHMENT TO
AFFIDAVIT OF EXEMPT STATUS

Chapter 47:03:10

APPENDIX B

SEE: § 47:03:10:01

Source:

APPENDIX B

EXEMPT STATUS FACT SHEET

An independent contractor is defined by law as one who engages to perform certain services for another, according to his own manner and method, free from control and direction of the contractor in all matters connected with the performance of the service, except as to the result or product of the work.

Below are statements to help you decide if you are an independent contractor. No one statement is controlling, and your status is based on all the facts in your situation.

1. The nature of the contract between you and the contractor shows you are independent from the contractor. For example: Is there a written contract where you agree that you are an independent contractor? Do you maintain commercial general liability insurance or other business insurance?
2. The contractor exercises no control over the details of your work or independence. Do you exercise control over the details of the work? Do you create plans or specifications for the job? Do you set your own work hours?
3. You are engaged in a distinct occupation or business for others. Do you work for a company or individual other than the Contractor? Do you work for a competitor of the Contractor? Does your business have a logo or uniform?
4. Do you have a sales tax license? Do you have a contractor's excise tax license?
5. You cannot complete the affidavit if you are a subcontractor who is also an employer. Do you have employees?
6. Is your business incorporated? If you do business as a corporate entity you are typically considered an employee of the corporation and cannot complete the affidavit.
7. Your job is the kind of occupation where the work is usually performed by a specialist without supervision, and not under the direction of the contractor.
8. Your occupation requires special skills, license, education, or training.

9. The contractor does not supply the things needed to perform your job such as the tools and the place of work. Do you operate a vehicle owned by the contractor? Was the work performed at your business or the contractor's business location or jobsite?

10. The length of the job and how long you have worked for the Contractor does not show that you are really an employee. For example: Is this a one-time job, or will you be doing this for the contractor regularly?

11. You are paid as a separate contractor, not as an employee. Do you invoice the Contractor for your services? Do you file a federal income tax return for your business? Do you expect to receive an IRS Form 1099 from the Contractor?

12. Your work is not the regular business of the Contractor.

13. You do not have the right to terminate the relationship without liability. For example: If you quit before the job is finished, is there a penalty?

Based upon these factors, do you believe that you are an independent contractor with exempt status?

_____ Signature _____
(WRITE YES OR NO) (INDEPENDENT CONTRACTOR/EXECUTOR)

Note: An employer who knowingly solicits or requires an employee or subcontractor to execute an affidavit when the employer knows that the employee or subcontractor is required to be covered under a workers' compensation insurance policy is guilty of a Class 2 misdemeanor.