

# MAINE STATE LEGISLATURE

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PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
OFFICE OF EXECUTIVE DIRECTOR/CHAIR  
442 CIVIC CENTER DRIVE, SUITE 100  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

PAUL H. SIGHINOLFI, ESQ.  
EXECUTIVE DIRECTOR/CHAIR

January 17, 2017

Amy Volk, Senate Chair  
Ryan Fecteau, House Chair  
Committee on Labor, Commerce, Research and Economic Development  
c/o Legislative Information Office  
100 State House Station  
Augusta, ME 04333

**RE: LD 1553**

Dear Senator Volk and Representative Fecteau:

Section 8 of LD 1553 enacted by the 127<sup>th</sup> Legislature last year provides, in pertinent part, “The Workers’ Compensation Board shall study the independent contractor predetermination provisions [of the Act]... and report” to the committee of jurisdiction any recommended legislation related to those provisions.

The misclassification of a worker as something other than an employee, usually misclassifying the worker as an independent contractor, is a serious problem for the affected worker, other employers, state agencies, and our state economy. Misclassified employees are often denied access to a number of critical benefits and legislative protections. This is a problem not only for workers’ compensation, but it also implicates the Department of Labor and Revenue Services. In addition, employee misclassification creates substantial revenue losses for our state treasury, Social Security, Medicare, and the Unemployment Insurance Fund.<sup>1</sup>

In 2016, the Workers’ Compensation Board’s monitoring, auditing and enforcement (MAE) program completed 20 employer misclassification audits. These investigatory audits covered 257 employees, \$1,249,032.72 in payroll, \$1,988,864.24 in subcontractor wages evidenced by the use of 1099s, and \$10,911.86 in casual labor wages. These resulted in investigations of \$2,456,919.70 in possibly misclassified wages and could have produced \$162,798.07 of unpaid workers’ compensation premium. Eight of these misclassification audits resulted in consent agreements between the Board and the audited employer where there was a finding of a violation of the Act’s coverage requirements. Penalties were assessed. Four audits evolved into more detailed investigations that are still underway; and the remaining eight audits did not result in further action either because the employer had the required coverage or because the Board did not have the statutory authority to proceed at the time the audit was concluded.<sup>2</sup>

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<sup>1</sup> An interesting development arose after the “minimum wage” referendum was passed. We started fielding telephone calls from small businesses asking how they could change the status of their workers from employees to independent contractors to avoid the effects of the referendum vote.

<sup>2</sup> The change in LD 1553 would have allowed us to proceed in some of these cases.

In addition to the MAE program, our predetermination of independent contractor division was busy in 2016. We have three predetermination application choices. The first, and most common, is an *Application for Predetermination of Independent Contractor Status*. A positive determination by the Board creates a rebuttable presumption an applicant is an independent contractor. A copy of this application is attached as Appendix A. The second is far less common; it applies to those who work independently as wood harvesters. This results in a certification of independent contractor status. A copy of that application is attached as Appendix B. The last application applies to those who harvest wood and seek a conclusive presumption of independent contractor status in the woods industry. This form is completed by the woods harvester (independent contractor) and either the landowner or the landowner's agent. A copy of that form is attached as Appendix C. With this application, the contractor and proposed independent contractor both make representations, agree on the worker's status, and make those representations to the Board.

In 2016, we received 7,134 predetermination applications. Of this number, the overwhelming majority were approved. Approval or rejection is based solely on an applicant's responses to our questions. If the questions are answered consistent with the kind of answers an independent contractor would provide, the application is approved. If the answers are not of a kind and nature an independent contractor would provide, the application is rejected. Five thousand five hundred and fifty five applications were approved for a rebuttable presumption; 28 were denied. The Board approved 162 of the wood harvester certifications out of 164 applicants. There were 114 conclusive presumption applications filed. All were granted. We returned a total of 1,120 applications because they were incomplete, contained limited information, and/or were on out-of-date forms. Our staff fielded 383 telephone inquiries seeking information or help completing an application.

In 2012, a taskforce made up of senior staff from the Department of Labor and the Workers' Compensation Board worked with the business community, insurers, labor, and others to arrive at a uniform independent contractor definition. The legislature accepted the work of this group and wrote the definition into legislation. Before the effective date of the legislation, steps were taken to educate the public on the new definitional change. Well over 30 presentations were given to civic groups, insurance agents, building contractor trade groups, and others to ensure the definition change was known and understood. A copy of the definition appears at the very beginning of Appendix A. We believe the definition contains all of the elements of those who function in our labor force as independent contractors. We believe further that individuals reviewing the definition can use it as a planning tool to ensure if they are going to work as an independent contractor they meet the state's expectations.

Last year, as part of LD 1553, the Board sought legislative authority to penalize sophisticated employers who were savvy enough to know how the definition works and crafty enough to understand the interplay between the definition and their workers' compensation insurance policy. We believe some employers misclassify employees because they know if there is coverage in place, that policy would apply to any person determined to be an employee, even if misclassified otherwise. There was a loophole in the functioning of our statute and the standard workers' compensation insurance policy. LD 1553 closed the loophole. The Board, before LD 1553, was prohibited from assessing penalties in cases where it was determined there was

coverage that could extend to misclassified workers. With this new legislative tool, the Board is now carefully scrutinizing employers to determine whether there are employers who purchase policies to cover some employees while at the same time misclassifying others in their workforce.

In the context of the inconsistency between the insurance contracts and our statute, it has been difficult to determine whether our predetermination of independent contractor status is fully protecting employees, other employers, and society at large. We think LD 1553 is an improvement, but we can do better.

The problem with our predetermination process is we accept at face value representations made by individuals on our applications. We have no mechanism to independently verify the substance of any answer to an application question. You will note on the application, and in the statute, there are penalties assessed if individuals or legal entities submit applications that are fraudulent or intentionally misleading. This language is helpful. The problem is the how and when the Workers' Compensation Board is afforded an opportunity to make judgements on whether answers are fraudulent or misleading. There are two instances, the first is when a claim for benefits is made by a misclassified employee and the issue arises in the context of a case. In the past year, we have had no benefit claims raising the issue. The second is when either through a random employer audit, or a formal audit complaint, our investigation staff uncovers a misclassification problem.

We have some reason to believe, based mostly on anecdotal reports, there are individuals and entities who complete applications and make representations inconsistent with the way their businesses operate. A solution to this is to modify the Board's independent contractor predetermination process extending authority to the Board to randomly verify application information. To do this would require additional staffing and would likely be seen as intrusive to the workings of the legitimate independent contractor. Without the ability to conduct random verification, we function at the mercy of those willing to report misclassification, or misclassification is uncovered in a random audit.

The state of Florida, and at one time, New Hampshire,<sup>3</sup> addressed the issue of misclassification by requiring all workers have workers' compensation coverage.<sup>4</sup> Florida provided an out if someone working, for example, as a sole proprietor elects not to be covered and submits an affidavit to the Workers' Compensation Board representing he will not pursue a workers' compensation claim against any putative employer because of his independent status. This is an option that could be explored. I would anticipate significant pushback from the "small business" community because of the cost associated with securing coverage and the bureaucratic burden of filing a "non-coverage non-claim" affidavit.

The problem with misclassification is one that is pervasive throughout this country. I know of no state that has discovered a definitive solution to the problem. In principle, what our legislature did in 2012, adopting a uniform independent contractor definition, should have provided a

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<sup>3</sup> New Hampshire's experience has a lesson for other states. The legislation requiring coverage was repealed the year after it was enacted because it was seen as unworkable and created so many problems for small businesses.

<sup>4</sup> New Hampshire was limited to construction trades.

solution. In practice, however, we suspect there are businesses that work to circumvent the definition, the predetermination process, and continue to misclassify.

While the Board is not recommending any legislative changes at this time, it will continue to study the issue and will continue its education and outreach efforts in an effort to promote compliance with the Workers' Compensation Act.

Very truly yours,



Paul H. Sighinolfi, Esq.  
Executive Director/Chair

cc: Senator Shenna Bellows  
Senator Brian Langley  
Representative Susan Austin  
Representative Dillon Bates  
Representative Donna Doore  
Representative James Handy  
Representative Lawrence Lockman  
Representative Anne-Marie Mastraccio  
Representative Joel Stetkis  
Representative Michael Sylvester  
Representative Karen Vachon  
Diane Steward, Committee Clerk  
Henry Fouts, OPLA Analyst  
Janet Stocco, OPLA Analyst

**IMPORTANT: PLEASE READ BEFORE COMPLETING APPLICATION**

**NOTICE TO APPLICANT:** Predetermination of independent contractor status is based upon the information provided in this application. Participation in the submission of a fraudulent or intentionally misleading form can result in fines of up to \$1,000 for an individual and up to \$10,000 for a corporation, partnership or other legal entity. **The predetermination WILL NOT apply if you do not perform work consistent with the information provided in this application.**

**Title 39-A M.R.S.A. §13-A establishes that:** A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit, both under the person's contract of service and in fact and the person meets specific criteria. In order for a person to be an independent contractor:

A. The following criteria must be met:

- (1) The person has the essential right to control the means and progress of the work except as to final results;
- (2) The person is customarily engaged in an independently established trade, occupation, profession or business;
- (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
- (5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and

B. At least 3 of the following criteria must be met:

- (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- (2) The person is not required to work exclusively for the other individual or entity;
- (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
- (6) The work is outside the usual course of business for which the service is performed; or
- (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
27 STATE HOUSE STATION  
AUGUSTA, ME 04333-0027  
Tel. 207-287-7071 / Fax 207-287-5413

APPLICATION FOR PREDETERMINATION OF INDEPENDENT CONTRACTOR STATUS  
TO ESTABLISH A REBUTTABLE PRESUMPTION

NOTICE

- **The predetermination process is voluntary under the Maine Workers' Compensation Act. The Act DOES NOT require an individual to receive an approved predetermination before working as an independent contractor.**
- **If you file this application, it may be: Granted or denied (you will receive a letter to this effect); or, instead of denying it, the Board may return your application and request additional information.**
- By submitting this Application you are not relinquishing your rights to be covered under the Maine Workers' Compensation Act—if you are injured you may still file a claim with the Board.
- Approved predeterminations are “portable” (may be submitted to any employing unit) and are valid for one year from the date of approval.
- The predetermination is only valid with respect to an employing unit if you work consistent with the answers on this application
- A predetermination from the Board is not binding on the Department of Labor.
- **You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.**

Pursuant to 39-A M.R.S.A. § 105, \_\_\_\_\_ (Applicant Name (and d/b/a if you use one)) hereby requests a predetermination by the Maine Workers' Compensation Board that the Applicant is an independent contractor.

APPLICANT

Name: \_\_\_\_\_

Doing Business As (d/b/a) (if applicable): \_\_\_\_\_

Complete Mailing address: \_\_\_\_\_  
STREET/P.O. BOX APT. NO.

\_\_\_\_\_ CITY STATE ZIP CODE

Telephone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Type of work you do: \_\_\_\_\_

**Note: Information provided on this form, not otherwise confidential, may be shared with other state and federal agencies.**

SECTION I

**THIS APPLICATION IS NOT COMPLETE UNLESS YOU ANSWER ALL OF THE QUESTIONS IN THIS SECTION AND PROVIDE ALL REQUIRED INFORMATION. INCOMPLETE APPLICATIONS WILL BE RETURNED.**

**(1) The person has the essential right to control the means and progress of the work except as to final results.**

(a) Do you have the right to decide how to perform your work?  Yes  No

(b) Other than the completion date for the work, do you have the right to determine when you will perform your work?  Yes  No

**(2) The person is customarily engaged in an independently established trade, occupation, profession or business.**

(a) Please state your trade, occupation, profession or business.

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(b) Please indicate how your business is organized:

- sole proprietor
- corporation
- limited liability company
- partnership
- professional corporation

(c) How long have you been considered independent in your trade, occupation, profession or business?

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(d) Have you worked for or searched for work from more than one source during the 12 months prior to the date of this application?  Yes  No

(e) Did you file a corporate or partnership income tax return last year for the trade, occupation, profession or business listed in Question 2(a)?  Yes  No

(f) Did you file Schedule C, Schedule E or Schedule F with your personal income tax return last year for the trade, occupation, profession or business listed in Question 2(a)?  Yes  No

(g) Did you pay self-employment tax and file Schedule SE with the I.R.S. last year for the trade, occupation, profession or business listed in Question 2(a)?  Yes  No



(h) If you answered "No" to Questions 2 (e), (f) and (g), please explain:

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**(3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity.**

(a) Check each of the following expenses you paid in the last 12 months in order to perform your work:

- |  |   |
|--|---|
| <input type="checkbox"/> rent and utilities                        | <input type="checkbox"/> insurance                    |
| <input type="checkbox"/> tools and equipment                       | <input type="checkbox"/> postage and delivery         |
| <input type="checkbox"/> training                                  | <input type="checkbox"/> repairs and maintenance      |
| <input type="checkbox"/> advertising                               | <input type="checkbox"/> supplies                     |
| <input type="checkbox"/> payments to business managers and agents  | <input type="checkbox"/> travel                       |
| <input type="checkbox"/> wages or salaries of assistants           | <input type="checkbox"/> leasing of equipment         |
| <input type="checkbox"/> licensing/certification/professional dues | <input type="checkbox"/> depreciation                 |
|  | <input type="checkbox"/> inventory/cost of goods sold |
|  | <input type="checkbox"/> other                        |

(b) Do you ever provide the materials necessary to complete your work?  Yes  No

(c) Do you ever provide the tools and/or equipment necessary to complete your work?  Yes  No

(d) Can you make more money based on how you do your work? For example, if material costs are lower than expected, or the job does not take as long as expected.  Yes  No

(e) Can you lose money doing your work? For example, if material costs are higher than expected, the job takes longer than expected, or re-work must be done due to a mistake or flaw, etc.  Yes  No

(f) Are you responsible for completing the work you agree to do?  Yes  No

(g) If you fail to do quality work, do you have to redo the work or fix the mistake at no additional cost to the people or businesses who hired you?  Yes  No

**(4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work.**

- (a) Can you, if you want, use assistants and/or subcontractors to perform, or help perform, your work?  Yes  No

If "No" please explain:

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- (b) Do you use assistants to perform your work?  Yes  No  
(If "Yes," answer questions (c), (d) and (e). If "No," proceed to question (5).)

- (c) Are you responsible for paying your assistants?  Yes  No

- (d) Are you personally responsible for supervising the details of your assistants' work?  Yes  No

- (e) Do you provide Workers' Compensation coverage for any individuals who work with you?  Yes  No

**(5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted.**

- (a) Do you advertise?  Yes  No

- (b) Do you have the right to work for more than one person or business at a time?  Yes  No

- (c) Other than the completion date for the work, do you determine what you work on, how you will perform the work and when you will work on it?  Yes  No

## SECTION II

**YOU MUST ANSWER ALL QUESTIONS IN THIS SECTION. SATISFACTORY ANSWERS TO AT LEAST THREE (3) QUESTIONS ARE REQUIRED TO QUALIFY. INCOMPLETE APPLICATIONS WILL BE RETURNED.**

**(6) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work.**

- (a) Have you made a substantive investment in the facilities, tools, instruments, materials or knowledge you use to complete your work?  Yes  No
- (b) Do you provide the essential equipment or knowledge that is used to complete your work?  Yes  No
- (c) Are you required to lease essential equipment from the people or businesses who hired you?  Yes  No
- (d) If the answer to (6)(c) is "Yes," are you paying fair market value for the equipment that you are leasing?  Yes  No

**(7) The person is not required to work exclusively for the other individual or entity.**

- (a) Are you required to work exclusively for one person or business?  Yes  No
- (b) Have you worked for more than one person or business during the past 12 months?  Yes  No
- (c) Do you have the right to refuse work offered by the people or businesses hiring you?  Yes  No

**(8) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.**

- (a) If you do not complete the work you agree to do in your contracts (verbal or written), are you potentially liable to pay the people for the damages they suffer as a result of this failure?  Yes  No
- (b) If you fail to do quality work, do you have to redo the work or fix the mistake at no additional cost to the people who hired you, or potentially pay them money damages so they can have the work redone or fixed?  Yes  No

**(9) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work.**

- (a) Do you have agreements (verbal or written) with the people or businesses who hire you?  Yes  No

- (b) If the people or businesses that hire you cancel your contracts (verbal or written) before you have an opportunity to complete the work, are they potentially liable to pay you the money you would have received if you had completed the work?  Yes  No

**(10) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person.**

- (a) Are you paid by the hour for your work?  Yes  No
- (b) If paid by the hour, do you negotiate your rates?  Yes  No
- (c) Are your contracts (verbal or written) for specific work at a set price?  Yes  No
- (d) If the answers to 10 (a),(b) or (c) are "No," please explain.

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**(11) The work is outside the usual course of business for which the service is performed.**

- (a) Is the work you do different than the work performed by the people or businesses that hire you?  Yes  No
- (b) Have you worked as an employee for any of the people or businesses for which you currently work?  Yes  No

If yes, please provide the most recent date of your employment: \_\_\_\_\_

**(12) The person has been determined to be an independent contractor by the federal Internal Revenue Service.**

The Internal Revenue Service allows businesses or workers to request a determination as to whether or not a worker is an independent contractor. These determinations can be requested by filing Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* with the I.R.S.

- (a) Have you filed Form SS-8 with the I.R.S.?  Yes  No
- (b) If you filed Form SS-8, have you received a determination?  Yes  No
- (c) If you received a determination, please check the appropriate box:
- Approved  Denied  Other

Please provide the date the I.R.S. issued its determination: \_\_\_\_\_

**APPLICANT**

**THIS APPLICATION MUST BE SIGNED.  
UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.**

**Read carefully and sign below:**

I hereby certify the foregoing information is truthful and accurate. I understand if any information contained in this application is found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines as described on page 1.

I further understand this predetermination of independent contractor status is based upon the information provided in this application. I understand changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any changes to the information in this application or the circumstances described herein.

**You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

STATE OF MAINE  
 WORKERS' COMPENSATION BOARD  
 27 STATE HOUSE STATION  
 AUGUSTA, ME 04333-0027  
 TEL: 207-287-3751 FAX: 207-287-5413 TDD: (877) 832-5525

**APPLICATION FOR A  
 CERTIFICATE OF INDEPENDENT STATUS**

I, \_\_\_\_\_, hereby request, pursuant to 39-A M.R.S.A. Secs. 105 and 401, a Certificate of Independent Status.

WOOD HARVESTER:

\_\_\_\_\_  
 NAME

\_\_\_\_\_  
 ADDRESS NUMBER AND STREET

\_\_\_\_\_  
 CITY STATE ZIP

\_\_\_\_\_  
 TELEPHONE NUMBER

**Please answer each of the following questions accurately and completely.**

1. (a) Do you work alone?

YES \_\_\_\_\_ NO \_\_\_\_\_

(b) If the answer to Question 1(a) is NO, do you work with (Please check appropriate box(es).)

Parent _____	Child _____
Spouse _____	Niece _____
Sibling _____	Nephew _____
Partner _____	Other (please describe) _____

2. Please list the tools and equipment that you own and use to harvest wood. (Attach a separate sheet if necessary.)

3. Who is in charge of your day-to-day operations?

4. Do you usually work for more than one landowner during the course of a year?

YES \_\_\_\_\_ NO \_\_\_\_\_

5. Please describe who you have done work for during the last twelve (12) months.  
(Attach a separate sheet if necessary.)

Landowner:

Start Date \_\_\_\_\_ End Date \_\_\_\_\_

6. Please describe who you will be doing work for during the next twelve (12) months.  
(Attach a separate sheet if necessary.)

Landowner:

Start Date \_\_\_\_\_ End Date \_\_\_\_\_

7. Please check the boxes that indicate how you are paid for harvesting wood.

By the Hour \_\_\_\_\_

By the Job \_\_\_\_\_

(In a lump sum) \_\_\_\_\_

By the Cord \_\_\_\_\_

By Board Feet \_\_\_\_\_

Other (please describe) \_\_\_\_\_

**Please read carefully and sign below.**

I hereby certify that the foregoing information is truthful and accurate. I understand that should any information contained in this application be found to be intentionally misleading or fraudulent, the Certificate of Independent Status shall be nullified. I further understand that the Certificate of Independent Status is based upon the information provided in this application and that any changes in these circumstances may nullify the Certificate of Independent Status. I agree to notify the Workers' Compensation Board of any subsequent changes.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF WOOD HARVESTER

**APPLICATION FOR PREDETERMINATION  
OF INDEPENDENT CONTRACTOR STATUS  
TO ESTABLISH CONCLUSIVE PRESUMPTION**

STATE OF MAINE  
Workers' Compensation Board  
27 STATE HOUSE STATION  
AUGUSTA, ME 04333-0027  
TEL: (207) 287-7071 FAX: (207) 287-5413 TDD: (877) 832-5525

LANDOWNER

LANDOWNER'S AGENT (IF APPLICABLE):

\_\_\_\_\_  
NAME

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS NUMBER AND STREET

\_\_\_\_\_  
ADDRESS NUMBER AND STREET

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

I, \_\_\_\_\_ (landowner or landowner's agent), hereby request a predetermination pursuant to 39-A M.R.S.A. §§ 105 and 401 that the relationship between the above-named landowner and the following individual or company is that of landowner/independent contractor within the definitions contained in 39-A M.R.S.A. §§ 102(13) and 401(4).

WOOD HARVESTER

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS NUMBER AND STREET

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
TELEPHONE NUMBER

THIS DOCUMENT MAY BE PRODUCED IN ALTERNATIVE FORMATS SUCH AS BRAILLE,  
LARGE PRINT AND AUDIO TAPE.



**Answer each of the following questions accurately and completely.**

1. (a) Have you enclosed a copy of the wood harvesting contract?

YES \_\_\_\_\_ NO \_\_\_\_\_

(b) If applicable, have you enclosed a copy of the contract, between the landowner and the landowner's agent, that establishes an agency relationship?

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Does the wood harvester employ assistants to help in executing the contract?

YES \_\_\_\_\_ NO \_\_\_\_\_

If no, does the wood harvester have the authority to hire such assistants?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Does the wood harvesting contract expressly state that the independent contractor will not hire any employees to assist in the wood harvesting without first providing a certificate of insurance to the landowner showing that the independent contractor has obtained the required coverage for independent contractor's employees?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. (a) Which party supplies the tools and equipment that is needed to perform the work?

LANDOWNER \_\_\_\_\_ WOOD HARVESTER \_\_\_\_\_ OTHER (PLEASE SPECIFY) \_\_\_\_\_

(b) What tools are supplied?

5. Who has control over the day-to-day operation of the work?

6. What is the duration of the agreement to perform work? (If there is no specific term or duration to the contract, describe how the contract can be terminated.)

(2)

7. Will the wood harvester be performing the same type of work for other landowners while completing this contract?

YES \_\_\_\_\_

NO \_\_\_\_\_

If yes, please describe:

8. What are the terms of payment? (That is, is the wood harvester paid a specific sum of money, by the hour, by the amount of wood cut, or by some other method?)

9. Does the landowner make withholdings from the payments made to the wood harvester for social security, income taxes, unemployment or any type of insurance?

YES \_\_\_\_\_

NO \_\_\_\_\_

If yes, please explain:

**Read carefully and sign below:**

I hereby certify that the foregoing information is truthful and accurate. I understand that should any information contained in this application be found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified. I further understand that this predetermination of independent contractor status is based upon the information provided in this application and that any changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any subsequent changes.

\_\_\_\_\_  
SIGNATURE OF LANDOWNER/AGENT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF WOOD HARVESTER

\_\_\_\_\_  
DATE