

Delaware Department of Labor
Division of Industrial Affairs
Office of Labor Law Enforcement
4425 North Market Street
3rd Floor
Wilmington, DE 19802
Phone: 302-761-8200

NOTICE OF INDEPENDENT CONTRACTOR OR EXEMPT STATUS

The classification of an individual as an independent contractor or exempt employee has significant implications. 19 *Del. C.* § 3503 sets forth the acts which are prohibited. Specifically that

- (a) An employer shall not improperly classify an individual who performs work for remuneration provided by an employer as an independent contractor.
- (b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined in subsection (c) of this section, but the employer has not classified the individual as an employee.
- (c) An "employer-employee" relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Department the employer demonstrates that the individual is an exempt person or independent contractor.
- (d) A person shall not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this section.
- (e) A person shall not knowingly conspire with, aid and abet, assist, advise, or facilitate an employer with the intent of violating the provisions of this chapter.

Further, in the event that any employer is found to violate 19 *Del. C.* § 3503, the penalties for such violation are set forth in 19 *Del. C.* § 3505, which states in pertinent part that:

- (a) Any employer who violates or fails to comply with § 3503 of this title or any regulation published thereunder shall be deemed in violation of § 3503 of this title, and shall be subject to a civil penalty of not less than \$1,000, and not more than \$5,000, for each such violation. Each employee who is not properly classified in violation of § 3503 of this title shall be considered a separate violation for purposes of this section.

Additionally, the failure to provide this written notice shall be Evidence of a knowing violation by the employer of 19 *Del. C.* § 3503 and the employer shall be liable for an administrative penalty of \$500 for each individual that the employer failed to notify.

I, _____ (individual) have read and understood the prohibitions as set forth above.

I, _____ (employer) have read and understood the prohibitions and penalties as set forth above.

Having read and understood the foregoing, _____ (individual) is classified as (1) an Independent Contractor or Exempt Person , for all purposes with respect to the individual's work on the _____ (name of project).
_____ (individual) began work on _____ (name of project) as a _____ (trade), on or about _____ (date). A copy of this notice has been provided to the individual and a copy will be kept by the employer.

Name of Employer/ Authorized Employer Signature

Date

Independent Contractor/Exempt Person Signature

Date