

# CC-FORM-36A

## WORKERS' COMPENSATION COMMISSION 1915 NORTH STILES AVENUE STE 231 OKLAHOMA CITY, OK 73105

THIS SPACE FOR COMMISSION USE ONLY

File original and one (1) copy with the Workers' Compensation Commission (WCC) in-person or by mail, or file online at [www.ok.gov/wcc](http://www.ok.gov/wcc).

Must be accompanied by a nonrefundable \$50 filing fee payable to the WCC.

### AFFIDAVIT OF EXEMPT STATUS UNDER THE ADMINISTRATIVE WORKERS' COMPENSATION ACT

CHECKS WILL NOT BE ACCEPTED.

Type of Filing (check one):  Original Affidavit of Exempt Status - Expires at midnight two (2) years from the filing date.

Renewal - Expires at midnight two (2) years from the expiration date indicated below.

If renewing a current Affidavit, provide: Affidavit # \_\_\_\_\_ and Expiration Date: \_\_\_\_\_

I, \_\_\_\_\_, state under penalty of perjury, as follows:

- I, \_\_\_\_\_ (Name of individual), in my individual capacity or operating as \_\_\_\_\_ (business name), have read, signed and attached the Exempt Status Fact Sheet and understand the definition of "employee" and specific exceptions to that definition found in 85A O.S. §2(18). I also understand that an Independent Contractor is one who engages to perform certain services for another, according to his own manner, method, free from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work. A Contractor may be either (i) the owner of a project or job or (ii) an Independent Contractor in any tier who has subcontracted with a subcontractor.
- I understand that based upon the representations in this Affidavit of Exempt Status ("Affidavit"), I am requesting that the recipient of this Affidavit consider my business to either (i) be exempt from the definition of "employee" or (ii) be that of an independent contractor, and that no workers' compensation insurance premium be charged for the services performed by my business. I do not want workers' compensation insurance and understand that I am not eligible for workers' compensation benefits.
- In the event changed circumstances make securing compensation pursuant to the requirements of the Administrative Workers' Compensation Act necessary, I will execute and file a Cancellation of Affidavit of Exempt Status with the Workers' Compensation Commission. I will obtain workers' compensation and employers' liability insurance for my employees if I have employees, unless they are otherwise exempt from the requirements of the Administrative Workers' Compensation Act.
- The information I have provided is not the result of force, threats, coercion, compulsion or duress.
- I understand that the execution of this Affidavit, if I am an independent contractor, shall establish a conclusive presumption that I am not an employee for purposes of the Administrative Workers' Compensation Act.
- I understand that the execution of this Affidavit shall not affect the rights or coverage of any employee of the individual or business executing this Affidavit.
- I understand if any contractor or its insurer shall become liable under the Administrative Workers' Compensation Act for the payment of compensation due to a compensable work related injury of my employee(s), the contractor or its insurer may recover from me the amount of such compensation paid or for which liability is incurred.
- I understand that knowingly providing false information on an executed Affidavit of Exempt Status shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

#### Affiant Signature

I declare under PENALTY OF PERJURY that I have examined all statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete.

Affiant Name \_\_\_\_\_ Title \_\_\_\_\_ Phone \_\_\_\_\_

Business Name \_\_\_\_\_ Email \_\_\_\_\_

FEIN/EIN/TIN # \_\_\_\_\_ Mailing Address \_\_\_\_\_

Affiant Signature \_\_\_\_\_ Date \_\_\_\_\_

*Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment, a fine or both.*

**It is a crime to falsify the information on this form.**

Effective 1/2/19

## EXEMPT STATUS FACT SHEET

Pursuant to 85A O.S., §36, any individual or business entity that is not required to secure compensation under the requirements of the Administrative Workers' Compensation Act (AWCA) may execute an Affidavit of Exempt Status. **Those who are unsure as to whether they may lawfully submit an Affidavit of Exempt Status should seek competent legal advice.**

**Employee:** 85A O.S., §2(18): The definition of "employee" includes any person, including minors, in the service of an employer under any contract of hire or apprenticeship, written or oral, expressed or implied. It excludes those whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer. Additional, specific exceptions may be found in 85A O.S. §2(18)(b).

**Independent Contractor:** The AWCA does not define "independent contractor." Oklahoma law considers an independent contractor to be one who engages to perform certain services for another, according to his or her own manner and method, free from control and direction of his or her contractor in all matters connected with the performance of the service, except as to the result or product of the work. Independent Contractors are not "employees" for purposes of the AWCA.

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. For example: Is there a written contract where you agree that you are an independent contractor? Are you a corporation or limited liability company? Do you maintain commercial general liability insurance or other business insurance?
2. The contractor exercises very little control over your work. For example: By the agreement, can the contractor exercise control on the details of the work or your independence? Do you exercise control over most of 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. For example: Do you work for companies or individuals other than the Contractor? Do you work for competitors of the Contractor? Does your business have a logo or uniform?
4. 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. For example: Does the Contractor supervise your work?
5. Your occupation requires special skills, license, education or training.
6. The contractor does not supply the things needed to perform your job such as the tools and the place of work. For example: Do you supply any of the materials or tools for the work? Do you operate a vehicle owned by the contractor? Do you perform the work at your business or the contractor's business location or jobsite? Do you wear a uniform supplied by the contractor?
7. The length and duration of the job 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?
8. You are paid as a separate contractor, not as an employee. For example: Do you invoice the Contractor for your services? Are you paid by the job? Do you file a federal income tax return for your business? Do you expect to receive an IRS Form 1099 from the Contractor? Does the Contractor pay your expenses?
9. Your work is not the regular business of the employer. For example: Is your work customarily done in the Contractor's line of business or as part of the Contractor's daily work? Have you ever been an employee of the Contractor? Do you work with other people hired by the Contractor on the work you perform?
10. You do not consider yourself an employee of the contractor. For example: Will the Contractor withhold taxes or monies from your payment? Have you ever been an employee of the Contractor? Have you or your employees ever filed an insurance claim against the Contractor?
11. 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?