



Wood Harvests: Workers' Compensation and Landowner Liability

Maine Forest Service, DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

22 State House Station, Augusta, ME 04333

Landowners may be liable for workers' compensation costs if a logger or his/her assistant is injured on their property while conducting a timber harvest (39-A MRSA § 401(4)). Such costs can amount to many thousands of dollars. To avoid this liability, the landowner must follow one of three courses:

1. Require Proof of Workers' Compensation Insurance:

A landowner who engages a timber harvester to cut a woodlot must ask for and receive a certificate of workers' compensation insurance issued by the insurance carrier from the harvester and must annually request and receive similar certificates as the work proceeds. If the insurance is cancelled during the time of the contract, the logger must notify the landowner in writing within 3 days of the cancellation (39-A MRSA § 401(3-A)).

If the logger does not provide proof of this insurance, you are liable for any injuries to his or her employees.

2. Require Proof of Independent Status:

A logger may receive from the Workers' Compensation Board a *Certificate of Independent Status* (39-A MRSA § 105). This is issued by the Board on an annual basis to a logger, certifying that the logger harvests forest products in a manner that would not make him an employee of the landowner. These certificates apply to all timber harvesting jobs carried out by the logger for the year of issuance provided the circumstances under which the certificate was issued do not change.

A written contract—a good idea.

A written contract between a landowner and logger is not required by law, but it is strongly recommended to protect the interests of both parties. A consulting forester can help write an individualized contract for your harvest. At a minimum, the contract should include:

- **The Contract Period** - State clearly when the contract begins and when it ends, and whether there are periods during which operations may be suspended (such as during spring thaw).
- **Access** - Define where and how the logger will get to the stands to be cut, and in what condition any access roads and log landings will be left.
- **Trees to be harvested** - Clearly define what trees will be cut and what trees will be left uncut, and how they are identified in the forest.
- **Harvest boundaries** - Indicate in the contract and in the field where the harvest should take place. If the harvest is near your land's boundaries, marking the boundaries is a legal requirement and prevents expensive mistakes.
- **Handling "slash"** - Slash treatment (tree tops and branches left on a site after a timber harvest) should be specified.
- **BMP's:** Identify clearly who is responsible for implementing Best Management Practices to protect water quality.
- **Insurance** - Clearly state what insurances are required before the contract is valid; do not sign the contract until you have insurance certificates in hand that are valid through the contract period.
- **Payment** - Spell out the basis for payment by type of timber (sawlogs, veneer, pulpwood, boltwood and other types) and remedies for late payment, default or failure to satisfy other obligations under the contract. Consider requiring a deposit or bond before harvesting begins.

If for any reason a landowner has a dispute with the logger, a copy of the Timber Harvest Contract signed by all parties will help clarify expectations, and becomes critical in any legal action.

3. Obtain Predetermination of Independent Contractor Status:

A landowner can submit to the State of Maine Workers' Compensation Board an *Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption* (39-A MRSA § 105). The "conclusive presumption" will be based on the application and the wood harvesting contract. The responses to the questions on the application will be evaluated to ensure that the wood harvester is an independent contractor and not an employee. Also, the contract will be checked to see that it contains the following mandatory language: **"The independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner."** (39-A MRSA § 401(4))

What are the Impacts of Independent Contractor Status?

If the "conclusive presumption" or "certificate of independent status" is approved, it will affect both the landowner and the wood harvester in significant ways. The landowner will not be required to provide workers' compensation insurance for the wood harvester, because the wood harvester will be considered an independent contractor for the purposes of the Workers' Compensation Act. An independent contractor is not considered an employee. Since the wood harvester is not an employee, the landowner is not an employer. Therefore, the landowner is exempted from the requirement that employers provide workers' compensation insurance for their employees.

If the wood harvester is injured while harvesting wood on the landowner's property, the wood harvester will not be able to request that the landowner provide workers' compensation benefits. These benefits—which may include payment for medical treatment and lost wages, vocational rehabilitation and reinstatement to a previously held job—are only available to

employees. An independent contractor is not an employee.

Note: You may want to take similar steps for other independent contractors that work on your harvest such as truckers and foresters. For these individuals you may request a rebuttable presumption from the workers' compensation board.

For more information about laws and rules pertaining to timber harvests, contact your local District Forester.

An *Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption* or an *Application for a Certificate of Independent Status* may be obtained from the State of Maine Workers' Compensation Board or from the Maine Forest Service.

For more information, please contact:

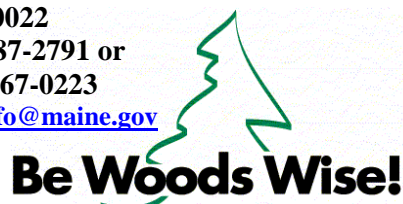
Workers' Compensation Board
27 State House Station
Augusta, ME 04333-0027
(207) 287-3751
www.state.me.us/wcb/

Landowners with questions about workers' compensation can call:

Linda Larrabee (Workers' Compensation Board)
Office hours: 6am to 2pm Monday through Friday
Phone: (207) 287-7071

For more information, please contact:

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