

**342.012 Business owners -- Election to be included as employees -- Qualified partners and members and nonqualified partners and members defined.**

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or qualified members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or qualified members of a limited liability company elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or nonqualified members, if any, required under this chapter.
- (2) When an owner, owners, qualified partners, or qualified members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.
- (3) For the purpose of this section, "qualified partner" or "qualified member or members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him or her to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.
- (4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.
- (5) Every partnership filing a partnership agreement and every limited liability company filing articles of organization or an operating agreement for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the commissioner the employer identification number assigned to the partnership or limited liability company by the Internal Revenue Service. On or before April 15 of each year, each partnership and each limited liability company having a partnership agreement, operating agreement, or articles of organization on file with the commissioner shall file a copy of the tax return of the partnership or limited liability company with the commissioner. Failure to comply with the provisions of this subsection shall be prima facie evidence that the

partnership agreement or limited liability company articles of organization filed with the commissioner is composed, respectively, of "nonqualified partners" or "nonqualified members", respectively, as defined in this section, and the commissioner shall promptly notify interested government agencies of the failure of the filed partnership agreement or limited liability company articles of organization or operating agreement to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the commissioner shall promptly report the failure to comply with the provisions of this subsection to the Energy and Environment Cabinet, Department for Natural Resources, Office of Mine Safety and Licensing, so that appropriate action may be undertaken pursuant to KRS 351.175.

- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1779, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 123, sec. 43, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 341, sec. 45, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 332, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 181, Part 14, sec. 67, effective April 4, 1994. -- Amended 1990 Ky. Acts ch. 20, sec. 1, effective July 13, 1990. -- Amended 1987 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 4, effective October 26, 1987. -- Created 1976 Ky. Acts ch. 219, sec. 1.