

ID Cards for Sales Personnel

When do I need an ID card?

Anyone performing pest control needs an identification card issued by DACS. When we talk about performing pest control it is clearly defined in Chapter 482.021 (22) F.S. as:

- a. Using any method or device to control pests,
- b. Identification or inspection for pests,
- c. Using any pesticides, poisons, or mechanical devices to control pests,
- d. All phases of fumigation,
- e. Advertisement of, solicitation of, or acceptance of remuneration for any pest control services

But what about salespeople knocking on doors?

See (e) above for the definition. There is further definition of an employee in Chapter 482.021 (8) F.S.:

- “Employee” means a person who is employed by a licensee that provides that person with necessary training, supervision, pesticides, equipment, and insurance and who receives compensation from and is under the personal supervision and direct control of the licensee’s certified operator in charge and from whose compensation the licensee regularly deducts and matches federal insurance contributions and federal income and Social Security taxes.

And the identification cardholder is defined in Chapter 482.21 (12) F.S.:

- “Identification cardholder” means an owner or employee to whom a current card has been issued by the department identifying the holder to the public or to any law enforcement officer or any agent of the department charged with, or entitled to exercise any function in connection with, the enforcement of this chapter and any rules made pursuant to this chapter.

Some folks might think that an “independent contractor” or someone paid with 1099 versus W2 employment status can work around this framework. The definition of an independent contractor is in Chapter 482.021 (13) F.S.:

- “Independent contractor” means an entity separate from the licensee that:
 - (a) Receives moneys from a customer which are deposited in a bank account other than that of the licensee;
 - (b) Owns or supplies its own service vehicle, equipment, and pesticides;
 - (c) Maintains a business operation, office, or support staff independent of the licensee’s direct control;
 - (d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials; or
 - (e) Pays its own workers’ compensation as an independent contractor.

Quite simply, if you are the person knocking on doors to solicit for pest control, you need an identification card. You also need training by the COIC. You also must be paid by the pest control company with taxes withheld by the pest control company. You must be an employee of the pest

control company, period. No 1099, no independent contractor, no you can't just sell, sign up, inspect, make recommendations or offer solutions, treat or perform any type of service without an identification card. You need an identification card.

What is the framework of 482 you mentioned?

The pest control licensing model is quite simple, really. The business license is issued per licensed business location (or branch if you will). Each office location must have a business license issued to conduct pest control operations. There must be a Certified Operator in Charge (COIC) of each category of pest control conducted at the licensed business location. The COIC's primary occupation must be with that business license, employed full time by a licensee and his principal duty is the personal supervision of the licensee's operations in the category(s) in which the COIC is certified. Under the COIC are the employees that perform sales and service as it relates to pest control. These employees are identification cardholders. If you think about it, our model is similar to that of a pharmacy where the store is licensed as a pharmacy, the pharmacist is the one in charge of the drugs and the pharmacy technician is the one doing the dispensing under the supervision of the pharmacist in charge.

I won't get into great detail about the qualifications and needs to obtain a business license or a certificate in this article. If you need a refresher, 482 is your friend. It is clear and is our law. This law has an attendant rule called 5e-14. 5e-14 is the flesh and 482 is the skeleton. 482 is the framework and 5e-14 makes the rules on how to apply it.

But I still want to understand more on ID cards

Here you are:

482.091 Employee identification cards.—

- (1)
 - (a) Each employee who performs pest control for a licensee must have an identification card.
 - (b) Either the licensee or the licensee's certified operator in charge must apply to the department for an identification card for each employee who will perform pest control therefor within 30 days after employment of that employee, on a form prescribed by the department. The licensee and the licensee's certified operator in charge are jointly responsible for obtaining such identification cards.
- (2)
 - (a) An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and shall not be an independent contractor. An identification cardholder shall operate only out of, and for customers assigned from, the licensee's licensed business location. An identification cardholder shall not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and shall perform pest control only for the licensee's customers.
 - (b) The identification card shall be carried on the employee's person while performing or soliciting pest control and shall be presented on demand to the person for whom pest control is being performed or solicited, to any inspector of the department, or to any of such other persons as are designated by the rules of the department.

(c) An employee may not perform pest control without carrying on her or his person a current identification card affixed with the employee's signature and current photograph.

(d) An identification cardholder may use only the licensee's pesticides, equipment, and other materials when performing pest control.

(e) An identification cardholder shall consult regularly with the licensee's certified operator in charge concerning:

1. The selection of proper and correct chemicals for the particular pest control work to be performed;
2. The safe and proper use of the particular pesticides applied; and
3. The correct concentrations and formulations of pesticides used for the various types of pest control work performed.

(3) A licensee or certified operator may not assign or use an employee to perform any category of pest control without providing trained supervision unless the employee is trained and qualified in that category of pest control. An employee may not perform, solicit, inspect, or apply pest control without first having been provided at least 5 days of field training in the appropriate category of pest control under the direct supervision, direction, and control of a certified operator.

(4) An identification card automatically expires when the holder thereof ceases to be an employee of the licensee for which the card was secured. In such case, either the licensee or certified operator in charge shall obtain and destroy the expired card. An identification card expires on the licensee's next anniversary date after issuance or upon transfer of business ownership, change of business name registered with the department, or change of licensee's business location address. Each identification card must be renewed annually thereafter on or before the licensee's anniversary date as set by the department for each licensed business location.

(5) The fee for each identification card is \$10.

(6) An employee whose duties are confined to office secretarial, bookkeeping, office clerical, office filing, trenching, digging, raking, putting up or taking down tents, clamping, or carrying away debris or such other activities as specified by the department shall be exempted by the department from being required to hold an identification card.

(7) A person may not be issued, or may not hold, an identification card for more than one licensee at any one time, except a certified operator for the express and sole purpose of, and period for, obtaining experience to qualify for examination in a category for which such person is not certified and seeks certification. The period of time for which a second card may be issued may not exceed 1 year from the date of issuance, except in the category of fumigation for which a card may be issued for 2 years.

(8) A licensee having more than one licensed business location may temporarily assign an identification cardholder, other than a certified operator in charge, to any of its licensed business locations without obtaining another identification card for such holder.

(9) For every employee who performs inspections for wood-destroying organisms pursuant to s. 482.226, the licensee or certified operator in charge must apply for an identification card that identifies that employee as having received the special training specified in this subsection in order to perform inspections pursuant to s. 482.226. The application for such identification card must be accompanied by an affidavit, signed by the prospective identification cardholder and by the licensee or certified operator in charge, which states that the prospective identification cardholder has received training in the detection and control of wood-destroying organisms, including but not limited to training in:

- (a) The biology, behavior, and identification of wood-destroying organisms with particular emphasis on ones common in this state and the damage caused by such organisms;
- (b) The inspection forms to be used to report the finding; and
- (c) Applicable federal, state, and local laws or ordinances.

Such identification cards must be applied for, and shall be issued and used, in accordance with this section. This subsection does not apply to a certified operator who is certified in the category of pest control with respect to termites and other wood-destroying organisms. A person may not perform such inspections except under the supervision of a certified operator in charge who is certified in the category of termites and other wood-destroying organisms pest control.

(10) In addition to the training required by subsection (3), each identification cardholder must receive 4 hours of classroom training in pesticide safety, integrated pest management, and applicable federal and state laws and rules within 6 months after issuance of the card or must have received such training within 2 years before the issuance of the card. Each cardholder must receive at least 2 hours of continuing training in pesticide safety, integrated pest management, and applicable federal and state laws and rules by the renewal date of the card. Certified operators and special identification cardholders for fumigation who maintain their certificates in good standing are exempt from this subsection. The department shall adopt rules regarding verification of such training.

Ok, whatever

If you are in a situation where you are or have people working for you in conflict with 482 and 5e-14 you are exposed for enforcement actions by the Department of Agriculture and Consumer Services. These actions can include (as quoted from 5e-14.149):

- (a) Denial of an application for licensure or license renewal and/or permits or refusal of a pest control registration, license, and/ or permit.
- (b) Revocation or Suspension of any license including permits.
- (c) Warning Letter.
- (d) Probation for a specified period of time not to exceed two years subject to conditions.
- (e) Administrative fine not to exceed \$5,000 for each violation.
- (f) Criminal prosecution by referral to the State Attorney under Sections 775.082 and 775.083, F.S.
- (g) Injunctive relief.
- (h) Issuance of a Cease and Desist Order, Immediate Stop Use or Stop Work Orders.
- (i) Institution of an action under Chapter 501, Part II, Sections 501.204, .207, .2075, .2077, .209, .211, .2105, .212, and .213, F.S., for violations involving deceptive and unfair trade practices where the legal remedies provided under Chapter 501, Part II, F.S., are needed to further protect consumers or recover damages associated with identified violations.

It can get bad quickly. Compliance is paramount.

Comments

Most companies are doing things right. Rules and laws are mostly written to answer to the actions of the few rather than the many. Because we are seeing an uptick in the number of companies that are coming from out of state, or companies trying novel approaches to growth or even companies that just don't care to follow the law, the Department is ramping up enforcement of these illegal operations. The Department has already addressed this issue to some violators and is working on cases identified by industry and consumer complaints. If you are aware of a company that is performing pest control illegally you can notify the Department and they will open an investigation. This takes time for evidentiary collection, case reviews and administrative action(s) but they will get on it. From there the defendant has Chapter 120 rights as an option which takes more time depending on the route chosen. Ultimately, the process is designed to stop illegal activities and to bring law and order to the industry in the best effort to protect consumers. You can notify the Department with Form 13687 located at this link <https://forms.fdacs.gov/13687.pdf> or you can call your local inspector for further assistance.

If you need some legal help to ensure that what you are doing is permissible, you should contact your attorney. I use Mark Ruff, Attorney at Law, as most of the industry does. Mr. Ruff can guide you on how to get on the right side of the line. He can be reached at: 407-951-6679 or email mark@mhrllaw.com.

The Department is here to help also. They want to make sure that compliance is first and are happy to answer any questions that you might have. You can always ask your local inspector or you can call Chief Jerry Everton at the Bureau of Licensing at 850-617-7944 or by email at Gerald.Everton@fdacs.gov. The DACS website for our division (AES) is at www.fdacs.gov/Divisions-Offices/Agricultural-Environmental-Services and has a ton of information and links to Law and Rule.

If you have any questions or comments for me, please reach out.

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