

Workers' Compensation

By Thomas K. Coughlin, AAI, Air-Sur, Inc



Premium Pitfalls

In the blur of what's required to run a business these days, executives often make the mistake of placing some important duties on the same level as an annual physical or a tune up for their cars. They're important things to do, but once completed they can be

forgotten until next year.

Treating some business matters this way can end up being expensive. Take, for example, the annual consultation with an insurance agent about workers' compensation premiums. More than likely, the agent initiates the meeting, obtains the anticipated payroll for the upcoming year and develops the estimated premium.

That's all there is until next year, same time, same agent. Right? Wrong! It's a rare business that doesn't change its game plan sometime during the following year. Such changes can affect how much money that business may owe at the time of audit. A higher-than-expected audit premium can deliver a blow to the company's well-planned budget.

More and more business owners are now realizing they can't approach worker's compensation coverage like their car's maintenance schedule. They've learned to monitor the areas which might result in additional audit premiums: independent contractors, employee classifications and employee payrolls.

Is that independent contractor your responsibility?

Unless independent contractors meet specific guidelines under the law, they have to be included in the hiring company's payroll calculation. To free the employer from liability under the law, independent contractors should supply an affidavit attesting that they:

Maintain a separate business with its own work facility, truck, equipment, materials or similar accommodations;

Hold or have applied for a federal employer identification number, unless the contractor is a sole proprietor who is not required to obtain that number under state or federal requirements;

Perform or agree to perform specific services or work for specific amounts of money and must control the means of performing the services or work;

Incur the principal expenses related to the service or work performed or agreed upon to be performed;

Are responsible for the satisfactory completion of the work or services agreed upon and could be held liable for failure to complete those duties;

Receive compensation for the work or services only as a commission, on a per-job basis or on a competitive-bid basis;

Show either a profit or loss in connection with completing the work or services;

Have continuing or recurring business liabilities or obligations;

Depend on the relationship of business receipts to expenditures for the success or failure of his/her business.

Provide either a certificate of workers' compensation insurance or a certificate of exemption from the Bureau of Worker's Compensation Compliance.

The other side of the coin is that employers can be fined up to \$5,000.00 for each independent contractor who fails to meet this criteria.

Classifying an employee improperly can prove costly.

Independent contractors don't pose the only pitfall on the path to accurate worker's compensation costs. Another, especially in aviation-related industries, can arise from improperly classifying an employee. The basis on which premiums are figured include classifications of an employee's job based on duties performed.

A discrepancy often arises at audit when it's discovered some duties place an employee in a more costly classification than his job title might suggest. This can happen, for example, when executives of a company perform flying crew duties.

The law says, "When there is an interchange of labor, the entire payroll of employees who interchange shall be assigned to the highest rated classification representing

any part of their work."

That being the case, the executive's entire payroll must be included in the flying crew category, rather than the clerical classification. When this difference is corrected at audit, it usually results in a large additional premium. The annual coverage review, not the audit, is the time to scrutinize and verify the classification of each employee.

Knowing which of your company's costs contribute to the premium.

The annual coverage review is also the time to closely inspect the payroll to make sure the premiums are accurate. The law says the workers' compensation premium is to be set "on the basis of the total remuneration paid or payable by the insured for services of employees covered by the policy," and defines "remuneration" as "money or substitutes for money." In addition to wages and salaries, the law specifies many other examples of remuneration, including from allowances for use of work-related tools that belong to the employee to the value of meals provided as part of pay. In all, there are 17 subsections that describe what should be included in remuneration.

Exclusions to what constitutes remuneration are almost as numerous. Perks such as a car and club memberships are excluded, as are payment for active military duty, work uniform allowances and a host of other items.

Once again, if the audit turns up higher totals for remuneration than were anticipated, the company may end up owing an additional premium. For this reason, it's wise to review payroll data regularly to make sure it remains in line with the amounts that were anticipated before the start of the policy year.

Finally, a business prepares for and actively participates in the auditor's quarterly or annual visit. Auditors are independently contracted, and it's not unheard of for one to be unfamiliar with the law and its official interpretations.

For this reason, there are four cardinal rules of an audit that should be followed to the letter to ensure a company's payroll exposure is being calculated correctly:

Someone who is totally familiar with the workers' compensation process should sit down with the auditor to make sure the data being inspected is being properly interpreted and evaluated.

The auditor should not be allowed to leave the company's premises until that person has reviewed and agrees with the audit worksheet.

An officer of the company should review and sign the audit.

The company should keep a copy of the audit and refer to it periodically in planning its workers' compensation insurance budget.

By paying attention to the steps outlined here, a company is protecting itself against unwanted and unexpected workers' compensation problems, allowing itself ample time and resources to devote to its primary business goals.

We hope you've found this update, a part of our "Professional Client Care" program, helpful in better understanding the issues. As always, we're ready to assist you further, should you have questions or wish to review your present risk-management programs.