




PROFESSIONAL INSURORS  
AGENCY, LLC

# How To Avoid Paying Sub(Contractors) Work Comp Insurance



## Worker's Compensation

When someone hires you to do work, they are under the assumption that anyone working under your contract (written or verbal) is either an employee or a subcontractor. Either way they look to you as the responsible party for any work done by you or on your behalf under your contract with them. It is true that if there is some sort of situation that leads to a bodily injury or property damage while you are working, you will bear some degree of fault and likely be brought in on any type of claim or lawsuit. In order to protect yourself you will need to have both insurance and risk transfer mechanisms in place. Since this article is about Workers Compensation Insurance we will focus on those exposures and risk management solutions.

### **EMPLOYEE EXPOSURES:**

Injuries sustained by your employees are pretty cut and dry. They are covered under your workers compensation insurance. Workers Compensation will cover all the medical exposures without limit subject to that state's workers compensation laws

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and a percentage of their lost wages while they recover. Once they reach maximum medical improvement there may also be a lump sum payment for permanent partial disability.

## SUBCONTRACTOR EXPOSURES:

The tax status of a worker does not always follow the Workers Comp exposure. For example, if you are paying someone under a 1099 and consider them a subcontractor, the workers comp commission or court for your state may not consider them a subcontractor. They will look at various other tests such as:

- Does the contractor have a written contract with you?
- Does the contractor control their own hours?
- Do you provide their tools?
- Do they work for others?
- Do they have their own workers comp insurance in place?

Because the workers comp court or commission in your state may determine

that the contractor is an employee and subject to benefits under your workers compensation policy if there is an injury, the insurance company may charge you for workers compensation for that contractor as they were your employee when they are auditing your premium at the end of your policy year.

## **Your best defense against picking up the liability for the additional premium or exposures is to have some practices in place to limit your exposures:**

- Have your subcontractors maintain their own workers compensation insurance and provide you with a certificate of insurance.
- Each certificate should come directly from the agent and not the contractor. This will assure that coverage is indeed in place when the certificate is issued and that they will notify you in the event the coverage lapses.



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- The certificate should be sent to you before they start the work. If it expires in the middle of the project or work, a new one should be issued prior to expiration of the old certificate.
- All certificates should be kept for at least 5 years.
- The certificate should contain a “waiver of subrogation” in favor of you and any upstream clients you may be working for. This will prevent the insurance carrier of your subcontractor from trying to recover monies from you if they determine you were somehow partially at fault in an injury of your contractors’ employees.
- Have these certificates ready when the insurance auditor shows up, so you do not get charged additional premiums for the contractors’ exposures.
- A written contract should be in place that matches your insurance certificate requirements and contains an indemnity agreement in favor of you.

For a free checklist of subcontractor insurance coverage options, please contact us and we will be glad to send it to you.