

Arkansas Workers' Compensation Commission Arkansas Insurance Department Arkansas Contractors Licensing Board



JOINT BULLETIN

To: Interested Parties **Date:** August 20, 2007

From: Arkansas Workers' Compensation Commission
Arkansas Insurance Department
Arkansas Contractors Licensing Board

Subject: CERTIFICATE OF NON-COVERAGE – THIS BULLETIN IS APPLICABLE TO SOLE PROPRIETORS, PARTNERS OF A PARTNERSHIP, MEMBERS OF A LIMITED LIABILITY COMPANY, MEMBERS OF A PROFESSIONAL ASSOCIATION AND SELF-EMPLOYED EMPLOYERS

Residential Contractors and Workers' Compensation

- Act 398 of 2007 mandates residential contractors to provide proof of workers' compensation coverage as a condition of licensure or renewal of an existing license.
- This change was made to ensure that a policy of workers' compensation insurance is present on every job.
- A residential contractor who is a sole proprietor, partner of a partnership, member of a limited liability company, member of a professional association, a self-employed employer, or an officer of a corporation may purchase a workers' compensation policy and exclude himself or herself from coverage through the insurance contract. The exclusion request must be signed and dated by the person requesting to be excluded and must be submitted to the insurance company at the inception of the policy.
 - A sole proprietor or self-employed employer is one who owns a business, supervises himself or herself, and does not draw a paycheck from another entity.

- A partner in a partnership is one who owns an interest in a business, supervises himself or herself, and does not draw a paycheck from another entity.
 - An employee is any person (either lawfully or unlawfully employed) in the service of another where the employer has the power or right to control and direct the employee in the means and method by which the work is done.
 - A business can be owned by more than one person - multiple partners, LLC members, etc. If the business is not insured, each owner must hold a Certificate of Non-Coverage.
- Holding a Certificate of Non-Coverage does not automatically make you a sole proprietor or a self-employed employer. A sole proprietor, self-employed employer, or partner in a partnership may become an employee of another if they enter into a relationship in which another person or entity has the power to control and direct them in the means and method by which their work is done. This means that a Certificate of Non-Coverage may be valid under one set of circumstances and not valid under a different work arrangement. An individual may be a sole proprietor on one job and an employee on another.
 - A Certificate of Non-Coverage is NOT and cannot be used as a waiver of workers' compensation liability.
 - A Certificate of Non-Coverage is used by sole proprietors, partners in a partnership, members of a limited liability company, members of a professional association, and self-employed employers to exclude themselves (not their employees) from workers' compensation coverage.
 - Your insurance policy, even a minimum premium policy in which you may have excluded yourself, will be audited by the insurer to ensure that premium has been received for all exposures. Premium may be added for any uninsured sub for which payment is reflected. A specific percentage of the contract payment will be considered labor and premium will be collected if the audit reveals too much labor expense for one person. All evidence of insurance coverage in force or Certificates of Non-Coverage must be obtained at the beginning of any construction project.

Questions and Answers

1. Why do I have to buy a policy that covers no one since I exclude myself and I have no employees? (You may hear this called a minimum premium policy, a blanket policy, a flat policy, a policy so I can get my license, etc.)

This is a “minimum premium policy” which means it is issued showing little or no actual payroll and the established premium is developed to cover the cost of issuing the policy and conducting the final audit. However, these policies will be audited at the end of the policy period and if more payroll is found for employees or uninsured subcontractors, you will be charged. ALL workers' compensation

policies are audited at the end of the policy. Proper bookkeeping may reduce your final audit bills.

This policy protects the residential contractor from unexpected liability if an injured worker is ruled to be an employee of the contractor. For example: You, the contractor, have an uninsured subcontractor who brings someone onto the job who gets hurt. Under the law, you probably would be held responsible to pay the claim, but you have this policy that will protect you.

It also protects all people who may be injured on the job by making sure there is a workers' compensation policy in force at the jobsite.

2. I'm not on the worksite every minute and don't always know who is there. Who is responsible for knowing the people who are on the worksite?

If you are the one who has a workers' compensation policy, then you must know who is on your worksite. You must make it clear to your uninsured subcontractors that they may NOT bring anyone onto the jobsite unless they let you know. You will be required to pay premium on these people.

3. What if I don't report this person's payroll since he isn't my "employee"?

You will be presumed to have been aware of your subcontractors' employees, regardless of whether you actually knew about them. The auditor will review your contract with the subcontractors, as well as the payments you made to the subcontractor. The auditor will use a formula to determine the percentage of that payment that was for labor. If the labor costs are too high for just the one subcontractor, you will be assessed a premium for your uninsured subcontractors' employees as determined by the labor costs.

If this individual was hurt on the job, you would most likely be liable to pay benefits. Not reporting payroll for an uninsured contractor or employee is fraud and is a Class D Felony. You could pay fines and/or do jail time. The Arkansas Insurance Department Criminal Investigation Division is very aggressive in investigating and prosecuting these cases.

4. What can I expect at audit?

The insurance company will contact you to set up a time to have an auditor meet with you to review your records. He will ask for your check registers, payroll records, employment tax reports, journals, vouchers, contracts, payroll and disbursement records, and programs for storing and retrieving data. The auditor may request access to any other records deemed necessary to determine how much "payroll" to include for employees, uninsured contractors, and employees or subs of uninsured subcontractors. Under the terms of the policy, you have agreed to provide access to these records.

5. How do I prepare for the audit?

DO NOT wait until the day before the audit to get your records in order. Good recordkeeping starts the first day of your policy.

There are three basic types of subcontractors:

- Those who are covered by an insurance policy.
- Those who have Certificates of Non-Coverage.
- Those who have neither.

You must get the following from your subcontractors:

- Certificates of Insurance from any of your subcontractors before they start work. **This is your best defense to avoid having to pay additional premium.** Confirm that the sub has current coverage, preferably by checking coverage on the Arkansas Workers' Compensation Commission Online Searches page at <http://www.awcc.state.ar.us/electron.html>.
- Certificates of Non-Coverage from your direct subcontractor excluding himself before the sub start work. Check the dates on the Certificate to confirm they are good for the entire period the sub works for you.
- Your direct subcontractor's records of payments to or contracts with any of his subcontractors (these will also be considered as payroll records). Get this after the work is done.

You need to have in your own records:

- Copies of all of the contracts, quotes for jobs from subs, especially if they specify what materials are and what is labor. You should provide check registers, payroll records, employment tax reports, journals, vouchers, contracts, and payroll.
- YOU should attend the audit. You may have a bookkeeper, CPA or agent there but no one can answer the auditor's questions about certain jobs as well as you can.

Other things you need to know:

- If you are not a good "paper person" then you may need someone to help you set up a good bookkeeping system. It will save you money in the long run.
 - A. Always tell the auditor the truth.

- B. Make sure you understand what the auditor is asking. If you don't understand, ask him to explain.
- C. An auditor cannot audit non-existent records. Cash payments will hurt you at audit.
- D. Actual payroll records from the contractor and subcontractor are best.
- E. A written contract that spells out exactly what is labor, materials, other expenses such as permits, etc. are GOOD.

Many industries have used the word “subcontractor” instead of “employee” for so long they have forgotten what a true employee is. **These words are not interchangeable.** An employee is any person (either lawfully or unlawfully employed) in the service of another where the employer has the power or right to control and direct the employee in the means and methods by which the work is done.

For more information you may contact the Arkansas Workers' Compensation Commission at (501) 682-2497, the Arkansas Insurance Department at (501) 371-2807, or the Arkansas Contractors Licensing Board at (501) 371-1504 or (501) 371-1520.