



Independent Contractor Or Employee? Which Is It?

Is the person working for you an independent contractor? If they're an independent contractor, they're excluded from workers' compensation coverage. If they're an employee, they're required to be covered for workers' compensation. Sounds simple, but this is the single most troublesome determination for most policyholders regarding workers' compensation coverage and their premium audit. And it's often the one issue that comes up as a costly surprise when a premium audit is completed.

Why? If there is not adequate documentation that the contracted labor was either covered for insurance elsewhere or truly exempt from coverage under Oklahoma workers' compensation laws, premium must be charged under your policy.

Why? There must be adequate premium charged to cover your company in the event that person is injured while performing work for you. Not having proof of coverage or proof of exemption puts your business at risk for a claim should they be injured.

The reality of the matter is this:

- Some people who consider themselves to be independent contractors will change their tune if injured. With no avenue for financial support, they decide maybe they really were an employee after all.
- Some people may not be completely honest. They may not disclose to you that they have other employees working for them who they are treating as independent contractors when, in reality, they should be classified as their own employees and covered by them.
- Sometimes it's just difficult to know for sure if someone would be classified as an employee, even if you view them as an independent contractor.

Listed here are actions to take to increase the likelihood that subcontractor labor will be excluded from your premium audit:

- Provide the CompSource auditor a copy of the certificate of insurance you obtained from them showing the subcontractor had valid workers' compensation coverage during the period of time they worked for you.
- Obtain an Exempt Status Fact Sheet from each subcontractor who doesn't have proof of a valid workers' compensation insurance policy. If after completing the sheet it appears the subcontractor is an independent contractor (meaning that the individual works alone and is not under anyone else's direction and control), then the Affidavit of Exempt Status form should be completed and signed by the independent contractor and

the form should be notarized. The general contractor must keep the Affidavit and Fact Sheet as documentation of the status of all independent contractors.

Both the Exempt Status Fact Sheet and the Affidavit of Exempt Status form are available on CompSource's web site at www.compsourceok.com. Click the graphic on the left side of the home page.

Factors that may indicate independent contractor status

These are factors that, if present, may indicate the worker is likely to be an independent contractor.

- They have a federal identification number.
- They have a business license.
- They have filed papers that list them as incorporated or as a partnership.
- The subcontractor performs work that involves a specialized skill or trade.
- The subcontractor maintains their own place of business.
- The subcontractor furnishes their own materials and tools to perform the work.
- The subcontractor and policyholder have a written contract that spells out the contractor/subcontractor relationship.
- The subcontractor has the right to hire and fire his own employees without obtaining permission from a general contractor.
- The subcontractor performs specific jobs for set prices agreed upon in advance and pays expenses incurred in connection with that specified job.
- The subcontractor provides invoices for work performed.
- The subcontractor has their own general liability insurance.
- The subcontractor has other clientele.
- The subcontractor has business cards or a Yellow Pages ad.

Make sure you are protected. ***Documentation is needed at the time of audit for proof of coverage or exemption on all work performed.*** Although there are many variables that determine who is considered an independent contractor, familiarizing yourself with this information may help you avoid being charged additional premium. Questions? Please contact Underwriting at 232-7663, ext. 5102 or 800-347-3863, ext. 5102.