

SPECIAL REPORT

OUT-OF-STATE WORKERS' COMPENSATION INSURANCE

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In Michigan and most other states, employers are required to purchase Workers' Compensation insurance. There are both civil and criminal penalties for those employers who fail to comply.

Claim denials could arise if employers have satellite offices or employees working out of their homes in states other than Michigan or if Michigan employees travel to other states and do work unless the Michigan policy has been properly endorsed.

Many employers wrongfully assume that Workers' Compensation policies cover out-of-state exposures automatically if payrolls are included on the Michigan policy. For many reasons, this assumption may not be correct.

Here is the bottom line. Each Michigan Workers' Compensation policy must be specifically endorsed to reflect all states where the employer has or will have work. Coverage is not automatic.

Let's look at the standard Workers' Compensation policy declarations page, a copy of which is attached.

ITEM 3.A. *

Item 3.A. of the declarations page outlines those states where the Workers' Compensation coverage is provided as of the inception date.

The policy must indicate under Item 3.A. all states where the employer has "work" as of the policy inception date.

** some insurance carriers use 4.A.
and 4.C.*

The policy does not define “work.” However, common sense would tell us that if a salesperson who is visiting a customer or prospective customer in another state is injured from falling in their parking lot, this would be within the definition of doing “work”.

The same would be the case if you have a serviceperson traveling to another state to do work on equipment that you have manufactured and who is injured while repairing that machine. This is doing “work”.

If you have an administrative or salesperson who works out of their home in another state and is injured while driving and doing work-related activities on your behalf, this would constitute “work”.

Most activities of a person who works for you and is injured while in the course of employment in another state would constitute “work” and, therefore, Workers’ Compensation coverage has to apply.

The safest way is to be certain every year that as of the inception date of your Workers’ Compensation policy you have listed under 3.A. all states where you have work or where you know you will have work during the ensuing policy year.

ITEM 3.C.

Item 3.C. will list states other than 3.A. states where you do not have work and do not contemplate having work as of the inception date. This should list every state where you possibly could have work.

The 3.C. language should read:

- C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: All states and U.S. territories except monopolistic states, Puerto Rico, the U.S. Virgin Islands, and states designated in Item 3.A. of the Information Page.

If, under 3.C., you have listed a state where you did not have work and did not contemplate having work as of the inception date, but for some reason, a salesperson or other employee happens to visit that state, the policy will

extend coverage to work-related injuries in that state. But again, the work must begin after the inception date of the policy. If this is the case, all provisions of the policy will apply, just as if that state were listed in 3.A.

If you are doing work in a state that is not listed under 3.A. or 3.C., then you must report this to the insurance company within 30 days of when the work begins in order for coverage to apply if that employee is injured.

STATE OF HIRE

There is a safety net in most states for out-of-state injuries.

Here is the section of the law that applies in Michigan:

418.845 Out-of-State Injuries; jurisdiction; benefits

The Workers' Compensation agency shall have jurisdiction over all controversies arising out of injuries suffered outside this state if the injured employee is employed by an employer subject to this act and if either the employee is a resident of this state at the time of injury or the contract of hire was made in this state. The employee or his or her dependents shall be entitled to the compensation and other benefits provided by this act.

Essentially this indicates that if an employee was injured in another state and that employee is a resident of Michigan at the time of injury or the contract of hire was made in Michigan, the Michigan Workers' Compensation law applies.

There could be a question relative to an employee's state of hire if a Michigan employer in the process of hiring an employee to do work outside of Michigan travels to that state and hires the employee. Is the state of hire Michigan or the state where the employee was actually hired? One method of resolving this ambiguity is to have the employer and employee sign a form similar to the following:

ACKNOWLEDGEMENT OF MICHIGAN AS THE CONTRACT OF HIRE STATE

The activities of Employer require travel and/or work in other states or countries.

The Employer maintains Worker's Compensation insurance to cover employee injuries that occur in the course of employment.

The following is an excerpt from the Michigan Worker's Disability Compensation Act of 1969 and, specifically, 418.845, which reads as follows:

418.845 Out-of-state injuries; jurisdiction; benefits.

Sec. 845.

The worker's compensation agency shall have jurisdiction over all controversies arising out of injuries suffered outside this state if the injured employee is employed by an employer subject to this act and if either the employee is a resident of this state at the time of injury or the contract of hire was made in this state. The employee or his or her dependents shall be entitled to the compensation and other benefits provided by this act.

The Employer considers your contract of hire to have been made in the State of Michigan, even though it may have been executed in another state. Your signature below acknowledges your agreement that the contract of hire was the State of Michigan and that Worker's Compensation and other benefits provided by the Worker's Compensation Act shall be payable in accordance with the Michigan Worker's Compensation Disability Act of 1969.

Signature of Employee

Signature of Employer

Do not rely on this safety net.

This may be good for certain states that cannot be listed under 3.C. that are known as monopolistic states, which as we said are North Dakota, Ohio, Washington and Wyoming. Under those circumstances, the Michigan law would apply.

It may also save the day if you forget to add a state to the 3.A. or 3.C. sections.

It may also help if a Michigan employee is hired out of state.

Other than this, make sure that 3.A. includes every state where you have (or contemplate having) operations within the policy year and make sure that 3.C. states include all other states so that you have automatic pickup of states where you did not contemplate having operations.

REVIEW EVERY YEAR

This needs to be carefully reviewed at every policy renewal date to be certain that you are in compliance at that point in time.

POTENTIAL FOR LITIGATION

Injuries to employees could result in litigation. For example, in Michigan, an employee who is driving a vehicle on company time would be covered under Workers' Compensation coverage as opposed to the Michigan no-fault automobile coverage because the driving was work-related.

A health insurance carrier that pays medical benefits will seek recovery of those benefits where it can determine that Workers' Compensation coverage could have applied.

Litigation can be minimized by being certain that you have listed under 3.A. or 3.C. every state where your work is or will be done.

CONCLUSION

Employers who fail to comply with Workers' Compensation laws, even if done so inadvertently, can face both civil and criminal penalties.

First, an employer is no longer protected by the "exclusive remedy" provision of the Workers' Compensation statute and the employee could sue the employer directly for any work-related injuries.

Second, the failure to secure a policy is a criminal misdemeanor which may result in a fine of not more than \$1,000 or imprisonment for not more than six months, or both. Each day's failure is a separate offense.

Third, an employer that failed to maintain Workers' Compensation can be sued by:

- An employee who was injured
- A medical facility that is looking to be paid
- An insurance company that wants to be repaid for payments made to an employee
- Medicare and Medicaid, asking to be reimbursed for amounts it has paid

It is critically important to have strict controls in place relative to employees who are working in other states to be sure you are protected under your Workers' Compensation policy.

A Marsh and McLennan professional risk manager can assist you with this.

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