Do Your Contractors Carry Workers' Compensation Coverage? How It Can Impact Your Policy and 5 Ways to Prepare for Insurance Audits and Disputes

Insights
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Workers' compensation insurance audits can lead to big and unexpected costs for your company, especially now that insurers and state governments are pushing for policyholders to ensure that their independent contractors and subcontractors carry their own workers' compensation coverage. If uninsured contractors are identified during an audit of your policy, the fees (or a portion of them) you paid to those contractors will be treated as if those payments were payroll to your own employees – potentially costing you significant back charges in additional premium, as well as hefty surcharges. We'll explain everything you need to know and give you five ways you can prepare for insurance audits and disputes.

What's a Workers' Compensation Insurance Audit?

A workers' compensation insurance audit reviews whether your workers' compensation insurance policy aligns with your business risk exposure. Insurance companies generally perform audits at the end of each policy term (typically, a 12-month period) to evaluate and verify the accuracy of the information you provided during the application process and to determine whether the premium you paid or have been charged for needs to be adjusted.

During the audit, the auditor will often request and review documentation tracking payroll records, cash disbursements, cash receipts, and certificates of insurance for subcontractors. Inaccurate, incomplete, or deficient records can result in significant premium adjustments and surcharges.

How Do Independent Contractors and Subcontractors Impact Audit Results?

Now that a spotlight is on contractors and subcontractors, it's critical to understand how their workers' compensation policies – or lack thereof – could affect your own policy.

Today's workers' compensation insurance policies often state that the carrier will review downstream contractors to verify that they had their own coverage in place during the applicable time period. This trend began after carriers were held responsible for claims involving uninsured downstream contractors.

If you can't prove that your downstream contractors had their own coverage during the policy period, your company could end up with a much higher bill. For example, if you can only provide certificates of workers' compensation insurance for a handful of contractors, or the certificates of insurance produced only cover a portion of the policy period, the auditor will:

- treat the fees you paid to the contractor for the period at issue as payroll; and
- require you to pay a higher premium.

And when those contractor fees total millions of dollars, your unexpected additional premium charge could equal $500,000 or more.

What Can You Do If You Disagree With the Audit Results?

If you are impacted by an unfavorable insurance audit, disputing the results can be an effective measure for the reduction, or even an elimination, of an additional premium. Disputes can often be raised directly with your insurance company, but it depends on the specific terms of your policy. Generally, you will need to:

- submit written correspondence to your insurance company's audit department;
- address any errors you identified in the audit; and
- provide supporting documentation and updated calculations.

Disputes may also be addressed before the State Department of Insurance Rating Bureau and will require the submission of similar documentation in support of the requested revisions and reductions.

In any event, do not delay initiating your dispute. Employers often fail to abide by strict deadlines and procedural rules for audit disputes and appeals and become barred from contesting audit findings and premium increase. This blunder can be costly.

5 Ways You Can Prepare for Audits and Disputes

1. **Keep detailed, organized and complete records**. This will help ensure correct classification of your employees and rating of your operation and provide support for any adjustments.
2. **Require written agreements for contractors** that outline the nature of the relationship and require them to maintain a complete insurance program, including workers' compensation coverage.
3. **Ask contractors to provide certificates of insurance** demonstrating workers' compensation. Make sure to verify and monitor that the limits of coverage are equal to or greater than the policy limits or the state's statutory limit, and that coverage is effective for the entire period that work is

performed during the audited policy period. You may need to obtain updated certificates of insurance for contractors during the policy period, depending on the policy expiration dates.

4. **Update your insurance carrier throughout the year**, in the event you experience significant payroll exposure over the course of the policy period.
5. **Work with your counsel throughout the dispute process**. Doing so can help you obtain favorable results. Fisher Phillips' attorneys regularly assist insureds throughout the audit dispute phase in identifying errors in areas such as payroll exposure, miscalculations, and misclassifications – resulting in significantly reduced audited premium totals.

Conclusion

If you have questions or would like assistance in initiating an audit dispute, please contact your Fisher Phillips attorney or the authors of this Insight. Our Workers' Compensation and Unemployment Cost Management Practice Group can help manage your risk exposure and keep your costs under control. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on workplace law issues.

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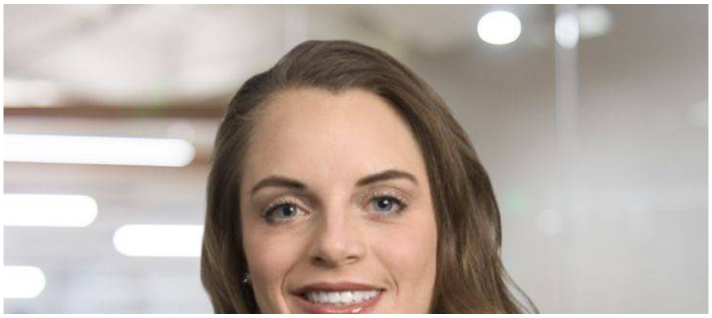

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