



THE STATE
of **ALASKA**
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DIVISION OF INSURANCE

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**DIVISION OF INSURANCE BULLETIN B 18-01
WORKERS' COMPENSATION DIVISION BULLETIN NUMBER 18-01**

**TO: EMPLOYERS WHO MAY BE SUBJECT TO LIABILITY UNDER THE ALASKA
WORKERS' COMPENSATION ACT, INSURERS AUTHORIZED TO WRITE
WORKERS' COMPENSATION INSURANCE IN THE STATE OF ALASKA, AND
OTHER INTERESTED PARTIES**

**RE: RESPECTIVE ROLES OF THE WORKERS' COMPENSATION DIVISION AND THE
DIVISION OF INSURANCE RELATING TO WORKERS' COMPENSATION
INSURANCE COVERAGE FOR CONTRACTORS AND SUBCONTRACTORS**

The Workers' Compensation Division (WCD) and the Division of Insurance (DOI) have received inquiries pertaining to the divisions' respective roles concerning the liability of contractors and subcontractors for employees' work-related injuries and concerning workers' compensation insurance coverage and audits for contractors and subcontractors. Given the relationship between these concerns, the divisions are issuing this joint bulletin under each of the division's respective bulletin numbers to address these inquiries.

WCD administers AS 23.30, the Alaska Workers' Compensation Act (Act), which requires employers or their workers' compensation insurers (insurers) to pay an injured worker's medical, disability, and reemployment benefits. The Act provides for payments to employees for work-related injuries and, under AS 23.30.045(a), makes employers liable for, and required to secure, such payments to the employees. This subsection of the Act further provides: "[i]f the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor." Under AS 23.30.075(a) of the Act, an employer subject to the Act is required to "either insure and keep insured for the employer's liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or furnish the [WCD] with satisfactory proof of the employer's financial ability to pay directly the compensation provided for." If an employer has

misclassified employees and therefore failed to insure for workers' compensation liability as required by the Act, the employer may be subject to penalties for its failure to insure.

The WCD Special Investigations Unit investigates employer compliance with the Act's coverage requirements. The WCD also houses the Alaska Workers' Compensation Board (board) which hears disputes arising between employees and employers or their insurers regarding the payment of benefits under the Act. Disputes that come before the board include disagreements on whether or not an employer – employee relationship existed at the time of the work-related injury and are decided by the board utilizing the relative-nature-of-the-work-test found in 8 AAC 45.890. The divisions caution contractors who have subcontracts with sole proprietors that, while the subcontractor (at any tier) may appear to be an independent contractor, a contractor may be subject to liability if one of their subcontractors (at any tier) fails this test and the subcontractor failed to secure workers' compensation insurance. The divisions strongly encourage all contractors and subcontractors to thoroughly review the test to determine whether an employer – employee relationship exists and to ensure the requirements of the Act are being met.¹

The DOI administers AS 21, Alaska's insurance code. Under AS 21.39, the division reviews and approves rates for rating organizations, including rates filed by the National Council on Compensation Insurance, Inc. (NCCI) for workers' compensation insurance policies. AS 21.39.030 requires that rates approved by DOI "shall not be excessive, inadequate, or unfairly discriminatory." The DOI, under AS 21.42.120, also reviews and approves insurance policy contract forms and has approved Form WC 00 00 00 C titled *Workers Compensation and Employers Liability Insurance Policy* filed by the NCCI. This policy provides that the policy's premiums will be determined by NCCI's manuals of rules, rates, rating plans, and classifications.² Under the policy, the policyholder agrees to keep records of information needed by the insurer to compute the premium and further agrees to let the insurer examine and audit all of the policyholder's records that relate to the policy. DOI Bulletin B 15-08 and Rule 2(H) of the NCCI *Basic Manual – 2001 Edition* (NCCI Rule) approved by the division provide further guidance on recordkeeping.³

Under Rule 2(H), contractors "must furnish satisfactory evidence that the subcontractor has workers' compensation insurance in force covering the work performed for the contractor." Satisfactory evidence may be provided to the insurer by the contractor under the rule by the contractor providing (1) a certificate of insurance for the subcontractor's workers' compensation policy, (2) a certificate of exemption, or (3) a copy of the subcontractor's workers' compensation policy. Rule 2(H) also provides:

¹ Under the test, a person's status as an employee or independent contractor is not determined on how the person files their IRS tax return, whether they are issued an IRS 1099 form, any agreement between the parties, or any other federal, state, or local law. An individual may be an independent contractor for non-workers' compensation purposes but an employee under the Act.

² The DOI, under AS 21.39.040, also reviews and approves every manual, minimum, class rate, rating schedule, loss cost adjustment, or rating plan and every other rating rule, and each modification of any of them that the NCCI proposes to use in the state.

³ Note while B 15-08 outlines what progression is approved when an insurer seeks records from its insured in order to determine final premium for the workers' compensation policy, the bulletin does not limit the type of records the insurer may request to determine premium. An insurer may review records in possession of the contractor that include copies of contracts between subcontractors and contracts the contractor's subcontractors may have with their subcontractors to assess whether or not the insurer is entitled to premium on the portion of payroll for these persons.

"For each subcontractor not providing such evidence of workers' compensation insurance, additional premium must be charged on the contractor's policy for the uninsured subcontractor's employees..."

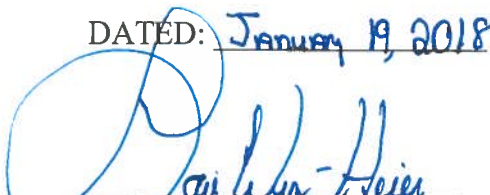
The policy provisions referenced above, B 15-08, Rule 2(H), and the audits conducted by insurers protect contractors and other workers' compensation policyholders by ensuring rates are not excessive, inadequate, or unfairly discriminatory; by collecting premium for the risk assumed; and by insuring contractors from liability for uninsured injuries.

As policyholders, contractors need to be aware that insurers conducting policy audits are not tasked with deciding which, if any, of the contractor's subcontractors (at all tiers) are exempt from carrying workers' compensation coverage. Nor are such insurers required to audit the records of the contractor's subcontractors (at all tiers). Therefore, contractors seeking to reduce their liability under the Act should obtain from each subcontractor (at all tiers) satisfactory evidence meeting the requirements under Rule 2(H). Further, given the potential misclassification of sole proprietors as independent contractors and not as employees, and the need for increased vigilance to avoid unnecessary liability, contractors are encouraged to require each of their subcontractors (at all tiers) to obtain workers' compensation insurance as a condition for working on the project.

Producers and brokers are urged to discuss the information contained herein with their clients applying for workers' compensation coverage and to provide a copy of this joint bulletin to them.

Please contact the WCD Special Investigations Unit at (907) 269-4002 for additional guidance about the Act's coverage requirements. If you have questions regarding the insurance aspects of this joint bulletin including rates and policies, please contact the DOI at P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515; or via email at insurance@alaska.gov.

DATED: January 19, 2018


Lori Wing-Heier
Director, Division of Insurance

DATED: January 19, 2018


Marie Marx
Director, Workers' Compensation Division