



YOUR BUSINESS AND UNINSURED SUBCONTRACTORS

Many otherwise knowledgeable business owners utilize uninsured subcontractors for various services; unaware of the risks they are incurring for their businesses. An *uninsured subcontractor* is typically a business that does not provide workers compensation insurance for its employees. This may be because the business is a “one-man shop”, and believes he wants to personally assume the risk of financial loss in the event of injury; in other cases it may be ignorance of the law; or an effort to avoid the cost of workers’ compensation insurance. Uninsured subcontractors often appear as construction tradespeople, owner-operator truckers, service firms (especially small operators), and others.

In truth, there are NO uninsured subcontractors. When an “uninsured subcontractor” employee, (including a one-man business) is injured while working on your behalf, the courts have repeatedly held that it is in the public interest that YOU, the beneficiary of the sub’s work, provide workers’ compensation coverage for these “uninsured employees.” You cannot opt out of this duty. No one can sign a document of any kind and relieve you of this responsibility. You are carrying these employees on your workers’ compensation policy whether you want to or not, whether you even realize it or not. Because of this “involuntary coverage”, when an insurance company auditor finds payment to uninsured subcontractors, he will treat this payment as your payroll, and you will receive a bill for additional premium. Your insurance company, like it or not, is in fact providing workers’ compensation coverage for these uninsured sub’s employees, so the company is entitled to the premium for providing the coverage, whether or not there is an injury. With high-hazard occupations, such as steel erectors, roofers, and others, you may be shocked to find that one or two uninsured subs have more than doubled your workers compensation premium!

Some businesses, aware of this problem, use “hold-backs”, “retainages” or “backcharges” of a set percentage of job cost, often 10% or 15% to try and offset the additional premiums they know they’ll have to pay for using uninsured subcontractors. The problem with this is that each of the trades carries different rates, according to the relative hazard of the trade. Rates are expressed in dollars per hundred dollars of payroll, so there’s an easy-to-see correlation in percentages. For instance, a certain trade may carry a rate of \$7.50, meaning that for each \$100 dollars of payroll paid, the insurance company collects \$7.50* of premium. If you pay \$1,000 of payroll for employees engaged in that trade, you’ll owe \$75.00 of premium. But the differing rates can get you into trouble. For instance, if you’re holding back 15% on a roofer, without knowing that the rate for roofers (a very high hazard occupation) is \$30.00*, you’re shorting yourself by half. On the other hand, if you withhold 15% on a tradesman whose rate is only \$7.50, you’re over-charging him by 100%. Rates not only vary by trade, but they can fluctuate from state-to-state, they can vary according to the rate filings of different companies, and they go up and down according to actuarial loss experience. Trying to obtain and keep up with these many rates, is a time-consuming and unproductive task, well beyond the capabilities of most businesses. Regardless of correct premium figures, in many cases, insurance underwriters feel they’re assuming too much hidden risk through use of uninsured subcontractors and cancel the insurance of businesses who use uninsured subs.

There’s another, even worse angle to using uninsured subs. You’re probably aware that safety pays, and you make certain efforts to be sure your direct employees do not take unnecessary risks, do not work with unnecessarily dangerous or broken tools and equipment, and are protected from toxic materials. But a subcontractor might not take these precautions. And if his carelessness leads to employee injury, YOUR claim history will be damaged. Insurance companies have a mechanism to reward claim-free businesses, and recoup

some of their losses from businesses that have excessive claims. It's based on your employee injury claims history, and does include uninsured subcontractor injuries.

An injury to an uninsured subcontractor's employee can ruin your insurance history, significantly raise your insurance premiums, force you into the assigned risk pool, (even higher premiums), and in extreme cases, run your insurance costs so high you are forced out of business.

RECOMMENDATIONS--

- 1.) Avoid using any uninsured subs, but especially high-hazard occupations such as roofing, carpenters, and painters. It is false economy to use uninsured businessmen who seem to offer lower costs. They may be operating outside the law, and in fact, are transferring the costs of *their* risk, and potential economic devastation, to you.
- 2.) Obtain current certificates of workers compensation (and other applicable coverages) from the sub's insurance agent or insurance carrier. ***Do not accept photocopied or even original-looking certificates directly from the sub.*** There are too many cases of forged certificates being presented. It is routine, ordinary business for agents to receive requests for and issue these certificates; you should accept no excuses. A sub that attempts to discourage you in this regard may very well be trying to defraud you. Implement a hard and fast rule—"No insurance certificate—no check on Friday".
- 3.) If your business routinely uses numerous subcontractors, you should consider using payroll and accounting software that automatically tracks the expiration dates of subcontractors' workers compensation insurance. Once you receive the certificate of insurance, you enter the expiration date of the policy into the software. The system will then alert you to subs whose policies are about to expire or have expired. Some systems can even be set up so they won't issue a paycheck if the expiration date has passed—a great incentive to use with your subs!

* Rates used are for illustrative purposes only, and do not reflect any actual insurance rates.