

Workers' Compensation Issues When Hiring Independent Contractors

If you hire independent contractors to perform work for or provide a service to your business, the Texas Supreme Court made a decision on August 31, 2007 that may affect you. The case was *Entergy Gulf States, Inc. vs. John Summers*.

The Court's decision has two potential implications for your business:

1. You may be able to effectively shield your company from lawsuits arising out of injuries incurred by an independent contractor's employees while working on your premises.
2. You may have to pay premium on your workers' compensation policy when you hire an independent contractor that doesn't have any employees.

Hiring Independent Contractors with Employees

Whether or not the independent contractor carries workers' compensation on his own employees, you can cover those employees on your workers' compensation policy and deduct the cost of that coverage from the contract price, if you execute the appropriate forms (available from our agency). By doing so, you may be able to avoid a lawsuit should an employee be injured while working on your premises. Your policy will pay workers' compensation benefits to the injured employee and the "exclusive remedy" provision of the Texas Workers' Compensation Act should cut off his or her right to claim that you or one of your employees caused the injury. Of course, this might affect the claims experience on your own policy which may result in higher premiums in the future.

If you don't want to cover the contractor's employees on your workers' compensation policy, you can avoid problems on your year-end premium audit by executing the appropriate forms (available from our agency) and obtaining a certificate of insurance from the contractor.

Hiring Independent Contractors without Employees

When you hire an independent contractor that doesn't have employees, the contractor is "deemed" to be your employee by the Texas Workers' Compensation Act. The contractor will be covered on your workers' compensation policy and you will be liable for additional premium based on the labor portion of the amount paid to the contractor. You can deduct the cost of the coverage from the contract price by executing the appropriate form (available from our agency).

For more information on this issue and assistance with the appropriate forms, please contact our agency.

Independent Contractors Working for Employers with Workers' Compensation

These rules do not apply to:

- Employers without workers' compensation
- Employers who are motor carriers or are involved in residential or small commercial construction

Independent Contractor with No Employees

- Deemed to be the employee of the hiring employer
- Covered on the hiring employers' workers' compensation
- Form DWC-81:
 - Acknowledges that the independent contractor is covered by the hiring employer's workers' compensation
 - Documents whether the hiring employer will withhold the cost of the coverage from the contract price
 - Must be filed with the workers' compensation carrier and DWC (if applicable) within 10 days of execution

Independent Contractor with Employees

Hiring employer wants to cover contractor's employees

- Execute Form DWC-81:
 - Acknowledges that the independent contractor is covered by the hiring employer's workers' compensation
 - Documents whether the hiring employer will withhold the cost of the coverage from the contract price
 - Must be filed with the workers' compensation carrier and DWC (if applicable) within 10 days of execution

If the contractor has workers' compensation policy covering own employees:

- Contractor should request Endorsement WC 03 02 (Designated Workplaces Exclusion) to avoid paying premium on own policy

Hiring employer does not want to cover contractor's employees

- Execute Form DWC-85:
 - Establishes independent relationship between hiring employer and independent contractor
 - Acknowledges that contractor's employees are not employees of the hiring employer
 - Is not required to be filed with DWC or the insurance carrier, but should be ready for inspection at audit time or upon request

If the contractor has workers' compensation policy covering own employees:

- Obtain certificate of insurance for inspection at audit time