

WORKERS' COMPENSATION INSURANCE AND ITS EFFECT ON CORPORATIONS, PARTNERSHIPS AND LLCs

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We have written previously on the issue of Workers' Compensation insurance and its effect on licensed contractors. As you know, any business whether it be a sole proprietorship, corporation, partnership or LLC that has individuals that perform work on their behalf, who are not independently licensed contractors, are required to carry Workers' Compensation insurance. We have also written about the effect of not having Workers' Compensation insurance when it is required. To remind you, if you have individuals who perform work that are considered employees and you do not have Workers' Compensation insurance for those employees, you will be considered by operation of law to be an unlicensed contractor. This will have a direct effect upon you to collect monies for work that you have performed and most likely will have to return any monies that you have collected on your project.

Prior to the passage of a recent law, officers, directors and working partners were generally not required to be covered under a company's Workers' Compensation policy. As a result of AB 2883, which was recently signed by the governor, effective January 1, 2017, officers, directors, partners and members of corporations, partnerships and LLCs may be required to be covered by your Workers' Compensation policy.

The new law, AB 2883, makes the following changes:

1. Any eligible individual (officer, director, general partner, managing member) electing exclusion from Workers' Compensation benefits must provide a signed waiver to the insurance carrier prior to January 1, 2017;
2. For corporations, officers and directors (i.e. members of the board of directors), must now also meet a 15% ownership threshold in order to be eligible for exclusion;
3. For partnerships, only general partners are eligible for exclusion;
4. For LLCs only managing members are eligible for exclusion.

Insurance Commissioner, Dave Jones, recently sent out a press release which stated:

“Beginning January 1, 2017, all business Workers' Compensation insurance policies, including in-force policies will be required to cover, among others, certain officers and directors of private corporations and working members of partnerships and limited liability companies that may have been previously excluded from coverage.

AB 2883 is going to cause significant disruption of Workers' Compensation insurers and employers. We have issued a notice today to Workers' Compensation insurers so that they know what the new law requires of them and we directed insurers to provide notice to employers so that they are made aware of the new law. Unfortunately AB 2883 did not include any language exempting in-force policies or delaying its effective date so as not to impact in-force policies. The DIR, AIA, and ACIC agree that this change in law applies to in-force policies.”

As mentioned above, the law prior to the passage of AB 2883, did not require business Workers' Compensation policies for officers, directors, and working partners. The new law now requires these classifications of persons to be covered under the employers' Workers' Compensation policy unless they meet a very narrow definition of the excluded employees. Officers, directors and partners are restricted to an even narrower set of rules, which requires these persons to sign a waiver under penalty of perjury and file the waiver with their employers' insurer.

“Insurance companies are required to identify and provide notice to each employer that may have employees that were previously excluded from coverage and are affected by the new law. Insurers are also required to determine and report the premium and loss experience associated [with] those who have not chosen to opt [out] of the coverage. **Employers who believe they may be affected by this change in law are encouraged to contact their Workers' Compensation insurer, agent or broker.**”

Although not discussed at all, the assumption would be that the person who was previously not required to have Workers' Compensation insurance and is now required but does not obtain Workers' Compensation insurance, would be deemed to be, by operation of law, an unlicensed contractor and thus be exposed to the harsh penalties that attach to unlicensed contractors.

*Many parts of this article are taken with the kind permission of our friend Phil M. Vermeulen, who recently published his own article on this subject matter.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman:

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