

Workers comp won't cover contract carriers

Several times in recent months, there have been hotline calls related to workers compensation insurance. Generally, the newspaper has been told by its insurance agent that it is required to have this coverage in place for its independent carriers. And the insurance folks are apparently pretty insistent that this coverage is needed. But they are wrong.

Unfortunately, there is no statute on the books that specifically says the above. But there is no authority that supports the insurance folks, either. Perhaps this is something they were told at an industry seminar. Perhaps this is the situation in other states. But, under Missouri law, if you have a proper contract with your carriers as independent contractors, you do not need to purchase workers compensation coverage, because it will not cover them.

The statute that governs who is an "employee" under Missouri's workers compensation law is Section 287.040. It states that "Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business."

The key here is if the employees are doing work "in the usual course of business." If your newspaper hires employees to deliver papers to your routes, then you would need coverage for them because they are your employees and you control their every action. But most newspapers that use carriers today are hiring independent contractors. Those carriers perform under contracts and they fully control the way papers are delivered. You are being careful to spell out that the newspaper is not requiring any certain person to perform the service, you are simply hiring a contractor to arrange performance of a service to



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you in whatever fashion they choose – delivery of the papers to certain specified addresses within certain windows of permitted times. Who performs the job, exactly what time and how the job is done and many other parameters are not specified – all you want is a specified outcome – delivery to a certain address by a reasonable time and in a businesslike fashion.

There are many reasons newspapers have gone to using independent contractors, and one of the most important reasons is to avoid liability for damages from the activities of the carriers that might arise during the delivery operation. But another good reason is the workers compensation issue. These independent carriers are NOT your employees and you do not need to be providing workers compensation insurance for them.

While no case specifically says newspaper contract carriers are exempt from coverage, existing case law says the standard for determining one is an independent contractor for workers compensation insurance is the same, or nearly the same, as for all other purposes. First and foremost, of course, is that you must have a contract with your independent contractors which spells out the tasks they are to accomplish and makes it clear that it is the result you seek, rather than exactly how they perform these tasks.

That contract is an important first element. A 2004 case, citing an ear-

lier 2001 case, starts by pointing the three factors a court must find in determining if a person performing a task under contract is really an employee of the company: (1) that the work be performed pursuant to contract; (2) that the injury occur on or about the premises of the employer contracting for the work; and (3) that the work be performed in the usual course of business of that employer. Your contract should set out that the carrier is performing a service that the newspaper does not perform. It is not

in your "usual course of business."

Case law in Missouri has set out tests to see whether one is an independent contractor, including, among others, the extent of control and actual exercise of control, supervision, right to discharge and method of payment, who provides tools and other factors. While

none of these factors is controlling, a court looks at all of them in making this determination.

And it's important to note that in the statutes relating to employment security benefits, the law specifically states, in Section 288.034.12, that the word "employee" does not include services by one who distributes newspapers if the contract provides that the individual won't be treated as an employee for tax purposes. While that statute relates to other issues, it supports the basis of the argument here.

In short, what is important to understand here is that these tests, all important for liability protection, are the same tests that govern workers compensation coverage. If you are told by a carrier you need to purchase such insurance, ask them why and make them justify it, because the likelihood is they will back down or be unable to support their position, at least under existing Missouri law.

"You are simply hiring a contractor to arrange performance of a service to you in whatever fashion they choose ..."