

Check worker comp rules to see if you are covered



Family members may be ‘employees’

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Last month this column addressed the issue of posting notices that a business is required to post, including the notice for workers compensation insurance. In connection with that notice, I mentioned that you must have five or more employees to be required to carry workers compensation insurance. In fact, it turns out that there are occasions when you are going to find you need workers compensation insurance even if you don't have five full-time employees.

First, if you are a sole proprietor, the law provides that each member of your family must be counted as an employee. In short, if you have a wife, two kids and their spouses, then you have, for purposes of the workers compensation law, six employees just within your family and therefore fall under the workers compensation law and must provide insurance.

The law allows a sole proprietor to purchase insurance and then exclude these non-participating family members from coverage as a means of excluding them. However, there does not appear to be any provision in the law to allow one to drop under the “five and more” employees rule through an exclusion of relatives.

If the business is a corporation, the law requires that all corporate officers must be counted as employees. However, the law allows a business to exclude corporate officers if they perform no service for the corporation other than to allow the business to use their name as a corporate officer, but receives no compensation from the business for employment tasks. This reflects the fact that such officers do not put themselves into a position where they are exposed to the risks of the particular job or employment.

And, according to state Workers Compensation officials, limited liability companies must include all members in the headcount, although they also are allowed to opt out of the count.

Part-time employees are counted as full employees for purposes of the “five or more” number. And all workers, even those who work sporadically, are counted unless they are seasonal or unless an employee has definitely been terminated.

Failure to provide this coverage results in the imposition of a fine. The agency's usual policy is to look back for a period of one year and to assess a penalty equal to the average cost of a year's coverage of insurance, rated on a month-to-month basis for all the months in the last year in which the company had the requisite number of employees but failed to have coverage. Of course, the fines for knowing violations of the law are much more severe.

And it is important to advise the state agency if your newspaper does NOT operate its own printing plant. The cost of insurance for an operation without a printing shop is lower due to the lower risk of injury since no printing equipment is contained on the premises.

I would be remiss if I didn't add a note to the bottom of this article about the issue of the revisions to the state workers' compensation law. There were many in August, but the most controversial one is a provision that slipped into the law that removes workers compensation as the exclusive remedy for on-the-job injuries that might be suffered by workers.

During the special session in September, the state legislature passed a revision to correct this error, but was unable to secure enough votes to add an emergency clause, meaning the correction won't go into effect until 90 days after it is signed by the Governor. That means that until possibly the end of the year, companies face the

potential of being sued for tort claims rather than the remedy for injured workers being solely a workers compensation claim.

This is an issue that will create even more litigation as it is sorted out, although the state agency is advising companies to simply continue to operate as though the state law were the only remedy.