

Friday October 9, 2009

Dear NCOIL Legislators Working Group & Susan Nolan, EVP:
CC: Jordan

On behalf of our PIA National, the members of the Business Issues Technical Working Group wish to thank you for the many changes that NCOIL members have made to this work product. It has transformed it into a more doable working model that provides more clarity on the goals desired to be accomplished countrywide in state WC accurate employer reporting of their WC classes.

We very much appreciate your due consideration to our suggestions which we see as "technical improvements" to what the NCOIL WG is developing (and therefore not material or in opposition to NCOIL's purpose, direction or developing model.)

Section 3 D.

We support the revision discussed for Section 3 D. We think it might help the clarification if the model in Section 2 includes three additional definitions:

"individual" - is a natural person, acting on their own.

"natural person" - is an individual acting on their own.

"person" - includes, but is not limited to all forms of firms, business entities, natural persons acting as DBAs, and may also include/apply to profit and/or nonprofit institutions, associations and the like, to include natural persons unless otherwise specified.

The issue central to the Section 3 D discussion is to protect the ability & right of any individual that owns any kind of property to be able to work on that property and/or its structures without need of WC. And that extends to volunteer family members or friends, i.e. painting parties. And even if that individual brings an IC person on to help/assist them - that the individual property owner still doesn't need WC for themselves & the hired IC person (individual or firm) is responsible for their own WC obligations. This holds whether it is their main home, vacation home, rental properties, land with storage sheds, etc..

Section 3 C.

PIA also suggests an additional definition to Section 2: , that of "Intermediate Contractor" - This is term is used and pivotal to the functioning of Section 3 C. - when a sole proprietor or partner is able to opt-out or not of WC. The term "Intermediate Contractor" is used to make clear when the WC opt-out dropped , and these persons are now expected to have WC.

Without a clear definition of this term, it is hard to appreciate the scenario you're suggesting as the reason.

Section 8 -

We also appreciate the inclusion in Section 8 Enforcement A. 7 & 8, addressing the "Stop Work Orders." This makes clear the intention of the NCOIL members to give states effective enforcement tools. Our PIA members advised us that their contractor customers greatly fear the issuance and enforcement of a "Stop-Work" Orders while a regulator is determining if their compliance has been appropriate. We shared this with you in our last set of comments.

We also agree with moving the standard from "intentional" to "knowingly," a standard that is reflected in most state & federal administrative law codes as the simple threshold to meet in order to enforce.

We also agree that the model should make clear that NCOIL's efforts intend to foster stronger compliance & enforcement with an expansion of potential enforcement tools. Including the wording that speaks to "no less than" is important.

One area we weren't sure was covered in the this section is when an employer demonstrates a repeating pattern of gross negligence in complying with these filing rules & it is this negligence that causes the gross noncompliance. All law requires one "to know," and while "knowingly" is a better standard than "intentionally" - in this area - states want employers to know that it is their legal obligation "to know" - and address and execute their WC responsibilities with care & accuracy which includes the areas of proper classification. Persons have been know to argue "I didn't know & I didn't do it knowingly," and thus allude the tougher penalty. Again, it is an issue of balance - but a state wants to be sure that if the employer is repeatedly negligent, especially in a gross &/or material manner/outcome/effect- THAT also allows them to up the enforcement penalties.

Again - thank for your efforts and providing an open process.

Thanks,
PIA National Business Issues Technical WG
Susan Sallada (PA)
Any Harris (NJ)
submitted by staff liaison, Pat Borowski.