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Sent: Friday, June 26, 2009 11:48 AM
To: Jordan Estey
Subject: additional comments on the model

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Jordan:

Additional comments on the working draft of the
Proposed Employee Misclassification Workers' Compensation Coverage Model Act

Section 3 Coverage Requirements

(A)(1)(b) provides an exemption process for construction companies. The Florida language is some of the better exemption language I've seen. My understanding from the process, though, is that it can be abused. It would be best not to allow exemptions. What we need to avoid is someone opening an LLC, getting an exemption and then working in what is otherwise an employment relationship. If exemptions are to remain in the model, at a minimum, an exemption should not apply if the independent contractor definition in (F)(2) doesn't fit the parties' business relationship.

Section 5 Application Requirements

Subsection (A) has all of the materials that are to be required in applications for coverage. I recommend adding a requirement for information on independent contractors in order to uncover potential abuse.

After "employee names," insert: "names of independent contractors, the work performed by the independent contractors and the compensation paid to independent contractors"

Section 7 Penalties

(E) This subsection makes it a second degree felony to submit false information on an insurance application. This would be benefited with conspiracy language. I would add:

"It is a second degree felony to knowingly assist, conspire with, or urge any person to engage in activity prohibited by this section."

That language is based on Florida Sec. 440.105(4)(b)(4).

(K) I understand the referral is to administrative review procedures.

Other items:

1) For construction contractors require premium for premium purposes every three months. Renewal applications should disclose the names of employees, independent contractors, their duties and compensation. The same penalties for false or misleading information in 7(E) should apply to the renewals. Employment in the industry fluctuates and is used as a covering argument in premium fraud cases. That becomes more difficult when premium renewals are required every three months. In Washington, employers

report to the state every three months. Also, employers and insurers could benefit by making additional premium payments/refunds sooner.

2)Disclosure: We believe that there should be disclosure of classification codes and remuneration of the workforce to the general contractor. An insurance certificate for a payroll of \$250,000 looks the same as one for \$10,000. The argument for disclosure is that when you add it to (1) above you make it harder for contractors to cover up knowledge of premium fraud. The argument against this is that it is disclosure of proprietary information. But, given the degree of fraud we are seeing, that should carry less weight. Codes and remuneration is on the policy "information page." Contact me if this is an idea you would like to develop further.

3)Definition of Independent Contractor: We still prefer the ABC definition, but we can support the definition in the draft, because it comes along with very good enforcement language.

Again, thank you for your work on this.

-Matt

Representative of the General President
United Brotherhood of Carpenters
and Joiners of America