

## **Managing Exposure: Michigan Construction Industry and the Use of Subcontractors**

### **A/R**

If you are a construction contractor in Michigan, any hiring of subcontractors (and their employees) opens up your risk for liability for work-related injuries. In fact, Michigan workers' compensation law designates the primary contractor as liable for workplace injuries of employees of uninsured subcontractors, as well as for any uninsured subcontractor who fails to meet the minimum requirements needed to establish independent contractor status. [MCL 418.161 & MCL 418.171]

#### **To Avoid Providing Coverage for Subcontractors:**

You must obtain valid, current workers' compensation certificates of insurance or a properly filed Form BWC-337 Notice of Exclusion for any dates a subcontractor or independent contractor works for you. If an Exclusion is received, this only applies to the individual, not to any employees the exempt worker hires, and additional proof of independence may be required (see DIFS Bulletin No. 89-03 for acceptable criteria).

Valid certificates/exclusions give us the ability to defend against claims brought against your policy with us by these workers. Every certificate you receive for anyone doing work for you should be sent to us within a reasonable time period (two weeks). If a certificate expires but the subcontractor is still working for you, it is your responsibility to obtain an updated certificate and provide that to us. Remember that it is always easier to obtain documentation when you are actively working with the person, rather than after the job is finished. You can, and should, require a current workers' compensation certificate prior to letting anyone on your jobsite. To avoid liability and consequently paying premium for any subcontractors you hire, you must provide us with a copy of a valid workers' compensation certificate/BWC-337 Notice of Exclusion for each person you hire, covering all dates they performed work for you.

#### **If Your Subcontractors Are Not Insured/Exempt:**

By law, your policy with us is insuring them and their employees, since you are the primary contractor. This means premium will be charged on your policy for each worker. If your subcontractor is not insured and they have employees, you are also liable for their employees' coverage and premium will be charged accordingly.

If certificates/exclusions are unavailable for any workers hired, provide us with description(s) of the work being performed and estimated annual payroll for each job. By doing this, we can accurately estimate the premium and allow a payment plan based on your premium size as approved by the Plan. If payroll estimates change, you must provide us with updated estimates as soon as you are able.

#### **The End Result:**

At the end of every policy term, we will perform a payroll audit to determine final exposure and premium. This will be based on actual exposure, rather than estimates, and all certificates/exclusions as well as all payroll records and proof of independence will be required at this time to ensure the most accurate premium is calculated. Please contact our office with any questions you may have regarding the use of subcontractors or independent contractors, certificates of workers' compensation insurance or Notices of Exclusion, and/or final audits. Our contact information is listed above.