

Let's Talk Comp

Does Your PEO Know When Work-Site Employees Have Traveled to Another State? Has Your PEO Received a Claim Originating From a State in Which You Didn't Know Had Exposure? Are You Covered for this Eventuality?

BY ROBERT G. BARROW, JR.

The myriad of questions that run through your mind when a claim is received from a client - a claim originating from a state in which you didn't know you had exposure - is most unsettling. How could this have happened? Does the firm have coverage? Will the firm be cancelled by the carrier?

Generally, employees most subject to accidents outside their jurisdiction state are:

- Employees who live near a state line and cross the border briefly on miscellaneous, job-related errands
- Employees, such as sales people and service technicians, who travel outside their home (insured) state
- Employees of contractors working on a job site outside their state
- Transportation employees
- Employees travelling to and from trade shows and conferences

Do you really know when your work-site employees travel to another state under the above conditions? There are ways to mitigate the exposure by being informed and thereby prepared:

(Part Three of the Workers' Compensation Policy addresses how coverage is applied to "Other States Insurance")

1. Other states insurance applies only if Item 3-C of the information page has correctly identified the state or states where the possibility of incidental exposure has been anticipated at the inception of the policy.



(Whereas, Item 3-A identifies any state with known exposure at the inception of the policy)

2. If work is begun in any one of those states, listed in Item 3-C of the information page, after the effective date of the policy, and the policy holder is not separately insured or self-insured for such work, all provisions of the policy will apply as though the state were listed in Item 3-A - the states of existing known exposure. However, the carrier must be notified at once.

3. The insurance carrier will reimburse the policy holder for the benefits required by the workers' compensation laws of that state, in the event the carrier is not permitted to pay the benefits directly to the person entitled to them - the claimant.

4. If the policy holder had exposure on the effective date of the policy in any state not listed in Item 3-A of the information page, coverage will not be afforded for that state unless the carrier is notified within thirty days.

Notice: Tell the carrier "at once" if work has begun in any state listed in Item 3-C of the information page.

In insurance language this means that the carrier must be advised on the effective date of the policy of all the states where there is exposure. Additionally, if other states are not listed in section 3-C, there is no coverage for any other states unless the carrier is notified within

thirty days of exposure.

The way to resolve this coverage issue is to list all the states with exposure at the inception of the policy in section 3-A. Also the carrier should be requested to insert in section 3-C "All states, except Nevada, North Dakota, Ohio, Washington, West Virginia, Wyoming (these states are monopolistic), and the states designated in section 3-A."

By adding this wording and keeping the carrier informed, a potentially costly uninsured loss will be avoided.

Another area of concern is when employees cross state lines. Where should the claim be filed and to which benefits would the employees be entitled.

Generally, the home state would be responsible, unless the employee is on a long term assignment in another state. But note, the courts have ruled that an employee who is entitled to file a workers' compensation

claim in one state is not barred from filing the claim in another state in which he is entitled to claim. This means that the injured employee may select the level of benefits from the higher of the two states, whether it's the home state or the state in which he was injured. This certainly can affect the costs on a loss sensitive plan.

There is one other endorsement to add if employees travel in any of the six of the monopolistic states: Please, be sure that the policy includes "stopgap" coverage. This will extend the policy to the differences in benefits that are allowed by those states, even when coverage has been purchased from one of the monopolistic states. The cost for this is minimal, if anything at all.

By paying attention to the listed states and wording in sections 3-A and 3-C, and by adding the "stopgap" coverage the loophole should be closed, thereby avoiding an uninsured loss in a state which slipped through the cracks when it came to notifying the carrier. A very costly oversight!

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