



**Workers'  
Compensation  
Board**

# Prove It To Move It

Workers' Compensation and Disability Benefits  
Requirements for Code Enforcement Officials

April 7, 2017



### Workers' Compensation Board

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**New York State  
Workers' Compensation Board**

# **Employers' Handbook**

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A Guide to the Workers' Compensation and the Disability Benefits Systems for the New York State Business Owner

# What Is Workers' Compensation and Disability Benefits Insurances?

- ▶ Workers' Compensation Insurance
  - Covers on-the-job accidents, injuries and illnesses.
  - Provides medical and wage replacement.
  - Protects both employers and their employees!
- ▶ Disability Benefits Insurance
  - Covers off-the-job accidents, injuries and illnesses.
  - Provides only limited wage replacement.

# Key NYS Workers' Compensation Organizations

- NYS Department of Financial Services
- Compensation Insurance Rating Board
- NYS Workers' Compensation Board
- Insurers
- Insurance Carriers
- Self-Insurers
- Group Insurers



# An Average Year in NYS Workers' Compensation

(average figures 2014-16)

- 680,000 Active NY Employers
- 170,000 Claims
- 75,000 Penalties Against Employers
- 7,000 Civil Judgements
- 11,000 Controverted Claims
- 320 Uninsured Claims



# Who Needs Coverage and Who Doesn't?

**Businesses with  
employees need  
coverage**



# Definition of an Employee

- Basically anyone providing any services to a for profit business can be determined to be an employee of that business.
- Basically any compensated individuals providing services to a nonprofit; the exceptions are clergy, and teachers in a 501(c)(3) nonprofit.



# Who Is Not Required to Carry Workers' Compensation Insurance?

- Sole proprietors with no employees.
- Partners in partnerships with no employees.
- One/two person owned corporations with no employees.

However...

# Specific Coverage Issues

- Sole Proprietors, Partnerships including LLCs & LLPs & Corporate Officers
- Independent Contractors and Subcontractors
- Family Members
- Domestics
- Borrowed Employees
- Farms
- Homeowners' Workers' Compensation Insurance Rider
- Leased Employees: Professional Employer Organization
- Nonprofit Organizations
- Out-of-state Employers Working in New York State
- Religious Organizations
- Student Interns
- Temporary Service Agencies
- Volunteers

# General Contractors: Under the Law

General contractors are liable for the workers' compensation claims of all uninsured subcontractors.



# Independent Contractor?

## 10 Indicators

**Indicators to identify if an individual is an independent contractor and not an employee:**

1. Obtain a Federal Employer Identification Number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on work or service performed the previous calendar year.
2. Maintain a separate business establishment from the hiring business.
3. Perform work that is different than the primary work of the hiring business and perform work for other businesses.

# Independent Contractor?

## 10 Indicators (cont'd)

4. Operate under a specific contract, and is responsible for satisfactory performance of work and is subject to profit or loss in performing the specific work under such contract, and be in a position to succeed or fail if the business's expenses exceed income.
5. Obtain a liability insurance policy (and if appropriate, workers' compensation and disability benefits insurance policies) under its own legal business name and federal employer identification number.
6. Have recurring business liabilities and obligations.

# Independent Contractor?

## 10 Indicators (cont'd)

7. If it has business cards or advertises, the materials must publicize itself, not another entity;
8. Provide all equipment and materials necessary to fulfill the contract;
9. Control the time and manner in which the work is to be done; and
10. The individual works under his/her own operating permit, contract or authority.

# Independent Contractors Under the 2008 Fair Play in Construction Act

Anyone hired by a person or other legal entity in the construction trades is presumed to be their employee.

Unless...



# Independent Contractors Under the 2008 Fair Play in Construction Act

12-part test to determine when a sole proprietor, partnership, corporation or other entity will be considered a “separate business entity” from the contractor. If an entity meets ALL of the 12 statutory criteria, it will not be considered an employee of the contractor. Instead, it will be a separate business entity that is itself subject to the new law regarding its own employees.

A separate business entity **must...**





# Independent Contractors Under the 2008 Fair Play in Construction Act

**For a person to be an independent contractor, the alleged employer must demonstrate ALL three of the following criteria:**

1. The person is free from control and direction in performing the job, both under contract and in fact.
2. The person is performing services outside of the usual course of business for the company.
3. The person is engaged in an independently established trade, occupation or business that is similar to the service s/he performs.

# Independent Contractors Under the 2008 Fair Play in Construction Act (cont'd)

In order to be considered an independent contractor in the construction trades, an entity must meet ALL of the following 12 requirements/steps:

1. The entity must be performing the service free from the direction or control over the means and manner of providing the service subject only to the right of the contractor to specify the desired result.
2. The entity must not be subject to cancellation when its work with the contractor ends.
3. The entity must have a substantial investment of capital in the entity beyond ordinary tools and equipment and a personal vehicle.
4. The entity must own the capital goods and gain the profits and bear the losses of the entity

# Independent Contractors Under the 2008 Fair Play in Construction Act (cont'd)

## 12 statutory criteria (cont'd)

5. The entity must make its services available to the general public or business community on a regular basis.
6. The entity must include the services provided on a federal income tax schedule as an independent business.
7. The entity must perform the services under the entity's name.
8. The entity must obtain and pay for any required license or permit in the entity's name.

# Independent Contractors Under the 2008 Fair Play in Construction Act (cont'd)

## 12 statutory criteria (cont'd)

9. The entity must furnish the tools and equipment necessary to provide the service.
10. The entity must hire its own employees without contractor approval, pay the employees without reimbursement from the contractor and report the employees' income to the Internal Revenue Service.
11. The entity must have the right to perform similar services for others on whatever basis and whenever it chooses.
12. The contractor does not represent the entity or the employees of the entity as its own employees to its customers.

# Out-of-state Companies Working in NYS

- Effective September 9, 2007, any out-of-state employer with employees working in NYS needs a full NYS workers' compensation insurance policy.
- NY must appear on Item 3A on the information page of a policy.

# Noncompliance Penalties

- Up to **\$2,000** for each 10 days out of compliance, or **\$72,000** a year.
- Up to 5 employees is a **misdemeanor**, subject to a maximum **\$5,000 penalty**.
- More than 5 employees is a **Class E Felony**, subject to a maximum **\$50,000 penalty** and a maximum of **1<sup>1</sup>/<sub>3</sub> to 4 years in prison**.

# Noncompliance Penalties (cont'd)

- ❑ **Employers are liable for all medical and wage benefits for claims made against them while uninsured.**  
(Includes corp. officers, partners & LLC members).
- ❑ Assessments of **\$2000** for every ten days are added for any period the employer was found to be uninsured.
- ❑ Workers' Compensation benefits are not capped in NYS.

## Noncompliance Penalties (cont'd)

- **\$1,000 fine** for each 10 days the business fails to keep accurate payroll records and/or correctly classify employees.
- Filing false documents is a **Class E Felony**.



# Other Noncompliance Penalties

- ▶ Stop Work Orders
- ▶ Barred from Bidding on Public Works Projects
- ▶ The following parties can be directly sued and are personally liable for any claims that occur while uninsured:
  - Sole proprietor
  - Partner
  - President
  - Secretary
- ▶ Liabilities include:
  - Penalties
  - Lost wages
  - Medical costs
  - Assessments

# The Appeal Process

- The Board's goal is to ensure every employer that should have insurance coverage has that insurance.
- This ensures benefits for injured workers, maintains a level playing field for employers, and prevents lawsuits.
- If you're penalized, don't stick your head in the sand! Appeal the penalty.

# Workers' Compensation Law

## Section 57 and Section 220, Subdivision 8

No permit, license or contract shall be issued without proper proof of Workers' Compensation and Disability Benefits Insurance.



# What Is A Legal Name Of An Employer?

## Why Is It Important?

- Each business using employees must have workers' compensation insurance in its own legal name and under its own FEIN.
- One policy can insure many legal entities, so long as there is common majority ownership among those entities and the carrier lists all the legal entity names and FEINs on the WC insurance policy.

# Proof of Workers' Compensation Compliance (For Businesses)

- Certificate of Attestation for Exemption (Form CE-200) Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage
- Certificate of Workers' Compensation Insurance Coverage (Form C-105.2)
- State Insurance Fund Version of Certificate of Workers' Compensation Insurance Coverage (Form U-26.3)
- Certificate of Workers' Compensation Self-Insurance (Form SI-12) or Certificate of Workers' Compensation Group Self-Insurance (Form GSI-105.2)

# Request for WC/DB Exemption

- Workers' Compensation Coverage Exemptions (from CE-200 online application)**
- If you have questions regarding entering information, click on Help**
- The applicant is certifying that legal entity applying for a permit, license or contract from a government agency is NOT REQUIRED TO OBTAIN NEW YORK STATE SPECIFIC WORKERS' COMPENSATION INSURANCE COVERAGE** for the following reason (to be eligible for exemption, applicant must be able to truthfully check **ONE** of the boxes from **a.** through **m.**):
  - a.** The applicant is NOT applying for a workers' compensation certificate of attestation of exemption and will show a separate certificate of NYS workers' compensation insurance coverage.
  - b.** The business is owned by one individual and is not a corporation. Other than the owner, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors.

# Request for WC/DB Exemption (cont'd)

**c.** The business is a LLC, LLP, PLLP or a RLLP; OR is a partnership under the laws of New York State and is not a corporation. Other than the partners or members, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors. **d.)** The business is a one person owned corporation, with that individual owning all of the stock and holding all offices of the corporation. Other than the corporate owner, there are no employees, day labor, leased employees, borrowed employees, part-time employees, other stockholders, unpaid volunteers (including family members) or subcontractors.

**d.** The business is a two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (each individual must hold an office and own at least one share of stock). Other than the two corporate officers/owners, there are no employees, day labor, leased employees, borrowed employees, part-time employees, other stockholders, unpaid volunteers (including family members) or subcontractors.

# Request for WC/DB Exemption (cont'd)

- e.** The applicant is a nonprofit (under IRS rules) with NO compensated individuals providing services except for clergy; or is a religious, charitable or educational nonprofit (Section 501(c)(3) under the IRS tax code) with no compensated individuals providing services except for clergy providing ministerial services; and persons performing teaching or non-manual labor. [Manual labor includes but is not limited to such tasks as filing; carrying materials such as pamphlets, binders, or books; cleaning such as dusting or vacuuming; playing musical instruments; moving furniture; shoveling snow; mowing lawns; and construction of any sort.]
- f.** The business is a farm with less than \$1,200 in payroll the preceding calendar year.
- g.** The applicant is a homeowner serving as the general contractor for his/her primary/secondary personal residence. The homeowner has no employees, day labor, leased employees, borrowed employees, part-time employees or subcontractors. The homeowner ONLY has uncompensated friends and family working on his/her residence.



# Request for WC/DB Exemption (cont'd)

**h.** Other than the business owner(s) and individuals obtained from a temporary service agency, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors. Other than the business owner(s), all individuals providing services to the business are obtained from a temporary service agency and that agency has covered these individuals for New York State workers' compensation insurance. In addition, the business is owned by one individual or is a partnership under the laws of New York State and is not a corporation; or is a one or two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (in a two person owned corporation, each individual must be an officer and own at least one share of stock). A Temporary Service Agency is a business that is classified as a temporary service agency under the business's North American Industrial Classification System (NAICS) code.

# Request for WC/DB Exemption (cont'd)

- i.** The out-of-state entity has no NYS employees and/or NYS subcontractors AND ALL work related to the permit, license or contract is done outside of NYS; OR ALL employees are direct employees of a government entity outside of New York.
- j.** The applicant is a sole proprietor, LLC, LLP, PLLP, RLLP, partnership or a one or two person-owned corporation acting as a general contractor that only has independent contractors that meet the standards of the New York Construction Industry Fair Play Act (Section 861 of the New York State Labor Law).
- k.** The applicant is a Native American Nation, an enterprise entirely owned by a Native American Nation, or is an enterprise owned by a tribal member located on a Native American Reservation.
- l.** The applicant is a Federal Agency or is otherwise covered by federal workers' compensation laws.
- m.** None of the above apply to applicant's situation.

# Proof of Workers' Compensation Compliance (For Homeowners)

- Homeowner Does Not Require Workers' Compensation Coverage (Form BP-1)
- Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage (Form CE-200)
- Certificate of Workers' Compensation Insurance Coverage (Form C-105.2)
- State Insurance Fund Version of Certificate of Workers' Compensation Insurance Coverage (Form U-26.3)

# Proof of Disability Benefits Compliance

- Applicant Does Not Require Workers' Compensation and/or Disability Benefits Coverage — Certificate of Attestation for Exemption (Form CE-200)
- Certificate of Disability Benefits Insurance Coverage (Form DB-120.1)
- Certificate of Disability Benefits Self-Insurance (Form DB-155)



# Verifying Workers' Compensation Insurance Proof of Coverage

- Ensure coverage is on the Board's website
- Go to **wcb.ny.gov**



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### Does Employer Have Coverage?

- Overview
- Frequently Asked Questions
- Technical Support
- Employer Coverage Search

#### Overview

This web based application allows interested parties to search policy and coverage information free of charge.

The policy and coverage information listed displays submissions from insurance carriers.

- Workers Compensation policy and coverage information is displayed from 2001 to date.
- Disability Benefits coverage is displayed from 1/1/02 to date.
- Proof of coverage information is updated daily by Proof of Coverage filings from the carriers.

If you cannot find an employer or suspect an employer of operating without workers' compensation insurance, please submit an **Employer Whistleblower Form** to the Workers' Compensation Board. This form can be [submitted online](#), or by mailing the [paper version](#), or by calling (866) 571-6729

Employer Coverage Search

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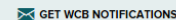
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#### CONNECT WITH US



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## Employer Coverage Search

If you cannot find an employer or suspect an employer of operating without workers' compensation insurance, please select one of the following links to [electronically send Employer Whistleblower Form](#) or, mail a [paper copy Employer Whistleblower Form](#) (PDF).

### Employer Search Criteria

#### Search by Employer Name

*(Enter a word or partial word of the beginning part of the name.  
The search will return employers that begin EXACTLY with the portion entered.)*

For example, 'American' will return 'American Industry', but not 'Great American'

Employer Name:

Maximum Results Displayed:

#### Search by Federal Employer Identification Number

FEIN:  ( must be nine digits )

#### Search by Policy Number

Policy Number:

#### Search by NYS WCB Employer Number

Employer Number:

Enter the 6 characters  
shown in the image to the right:



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WORKERS' COMPENSATION BOARD**

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#### Search Results

[New Search](#)

[Back to Search Criteria](#)

<a href="#">WCB Emp Num</a>	<a href="#">Employer Name</a>	<a href="#">Address</a>
2344293	HOW ADORABLE INC	MILLER PLACE, NY



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**Employer Coverage Search**

If you cannot find an employer or suspect an employer of operating without workers' compensation insurance, please select one of the following links to [electronically send Employer Whistleblower Form](#) or, mail a [paper copy Employer Whistleblower Form](#) (PDF).

**Coverage History**

**IMPORTANT NOTE TO GOVERNMENT AGENCIES:** The coverage information contained on this web site is **NOT** a substitute for government agencies requiring certificates of workers' compensation and disability benefits insurance from applicants pursuant to Workers' Compensation Law Sections 57 and 220. Government entities should only use the coverage information contained on this web site to verify certificates of insurance that have already been received pursuant to WCL Sections 57 and 220.

[New Search](#)

[Back to Search Results](#)

**Employer**

WCB Emp Num	Name	Address
2344293	HOW ADORABLE INC	MILLER PLACE, NY

**Workers' Compensation Coverage**

Insurer	Policy Number	Effective Date	End Date	End Reason	Wrap Up
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2011	01/05/2013	Policy Cancellation	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2010	12/01/2011	Renewal	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2009	12/01/2010	Renewal	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2008	12/01/2009	Renewal	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2007	12/01/2008	Renewal	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2006	12/01/2007	Renewal	N
FARM FAMILY CASUALTY INS CO	<a href="#">3152W8528</a>	12/01/2005	12/01/2006	Renewal	N

**Disability Benefits Coverage**

Insurer	Policy Number	Effective Date	End Date	End Reason
SHELTERPOINT LIFE INSURANCE	DBL244039	12/01/2005	02/28/2013	Non-Payment of Premium



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# Filing of Workers' Compensation Insurance Proof of Coverage

- Submit only the approved forms.
- Make sure legal name on the approved form matches the legal name on the permit, license or contract.
- FEIN numbers — make sure FEIN on the approved form matches FEIN on the permit, license or contract.
- Ensure coverage is on Board's website, **wcb.ny.gov**

1-10087

CERTIFICATE OF INSURANCE: EQWTR01

CGR SH 10/22/96

PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED		COMPANIES AFFORDING COVERAGE	
		COMPANY A American International Co.	
		COMPANY B	
		COMPANY C	
		COMPANY D	
COVERAGES		THE INSURED NAMED ABOVE FOR THE POLICY OR OTHER DOCUMENT WITH RESPECT TO POLICIES DESCRIBED HEREIN IS SUBJECT TO REDUCTION BY PAID CLAIMS.	
THIS IS TO CERTIFY THAT THE POLICIES OF THE PERIOD INDICATED, NOTWITHSTANDING ANY WHICH THIS CERTIFICATE MAY BE ISSUED ALL THE TERMS, EXCLUSIONS, AND COND.			
NO LTR	TYPE OF INSURANCE	AMOUNT	LIMIT
	GENERAL LIABILITY	ANNUAL AGGREGATE	
	<input type="checkbox"/> COMMERCIAL GEN LIAB	AMP/OP AGG.	
	<input type="checkbox"/> CLAIMS MADE	IND. INJURY	
	<input type="checkbox"/> OWNER'S & CONT	RENCE	
	<input type="checkbox"/> PROTECTIVE	(PRE)	
	<input type="checkbox"/>	(E)	
	<input type="checkbox"/>	(PERSON)	
	AUTOMOBILE LIABILITY	LE LIMIT	
	<input type="checkbox"/> ANY AUTO	BY	
	<input type="checkbox"/> ALL OWNED AUTOS	BY	
	<input type="checkbox"/> SCHEDULED AUTOS	(ANY	
	<input type="checkbox"/> BIKER AUTOS	(LIMIT)	
	<input type="checkbox"/> NON-OWNED AUTOS	UNAGE	
	<input type="checkbox"/>		
	GARAGE LIABILITY	SEA ACCD	
	<input type="checkbox"/> ANY AUTO	NO ONLY:	
	<input type="checkbox"/>	ACCIDENT	
	<input type="checkbox"/>	AGGREGATE	
	EXCESS LIABILITY	RENCE	
	<input type="checkbox"/> UMBRELLA POL		
	<input type="checkbox"/> OTHER TRAD		
	MEMBERS COMP. AND EMP. L	AT LIM (10TR	
	THE PROPRIETOR/PARTNER/	AN ACCIDENT	100,000
	EXECUTIVE OFFICERS AND	DISEASE-POL. LIM	500,000
	<input type="checkbox"/> INCL. <input type="checkbox"/> EXCL.	DISEASE-EA EMP.	100,000
	OTHER		
-DESCRIPTION OF OPERATION/LOCATION/VEHICLES/SPECIAL PLUGS-			
WC000301A, Alternate Employer Endorsement, and WC000313, Waiver of <del>Own</del> Right to Recover from Others Endorsement, are added in favor of this certificate holder			
CERTIFICATE HOLDER		CANCELLATION	
		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL EMPLOYER TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER AND TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPROVE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.	
ACORD 25-S (1/95)		AUTHORIZED REPRESENTATIVE	



SF Whipple

Questions or problems?

**Contact WCB Compliance**

**518-402-8330**

**1-877-632-4996**

**wcb.ny.gov**

Questions or problems?

**WCB Enforcement**

Teri Cooper (upstate)

518-486-3349