



Tonry Topics

CERTIFICATES OF INSURANCE FOR SOLE PROPRIETORS AND PARTNERSHIPS

Massachusetts workers' compensation policies issued to sole proprietors and partnerships do not provide coverage for the sole proprietor or partner(s) unless they elect coverage for themselves in accordance with G.L. Chapter 152, section 1(4) and 482 CMR 8.07. If a sole proprietor or partner elects coverage for himself, then he and all of his employees will be covered by that policy. If a sole proprietor or partner does not elect coverage for himself, then only his employees, if any, will be covered by that policy.

The Massachusetts Division of Insurance approved procedures effective May 1, 2007 that require Certificates of Insurance issued for sole proprietors or partnerships to indicate clearly in the comment section of the Certificate of Insurance whether or not the sole proprietor or partners have elected coverage.

Sole proprietors and partnerships sometimes purchase a workers' compensation insurance policy for the sole purpose of obtaining a Certificate of Insurance that can be presented to an insured employer for whom they want to perform work. However, unless the sole proprietor or partner has elected coverage for himself, the policy does not cover him. The approved procedures will enable the recipient of a Certificate of Insurance to better understand what coverage is provided by the workers' compensation insurance policy identified on the Certificate of Insurance.

Audit Guidelines

Audit Guidelines for sole proprietor and partnership Certificates of Insurance were released on October 24, 2007 and made mandatory for all workers' compensation policies issued through the Massachusetts Residual Market ("Pool") and strongly recommended for Massachusetts policies issued through the Voluntary Market. The Audit Guidelines apply when a policyholder pro-

vides a Certificate of Insurance for a Sole Proprietor or Partnership to determine whether payments by the policyholder to the Sole Proprietor or Partnership should be included in the policyholder's workers' compensation insurance premium basis in accordance with Parts One and Five of The Standard Workers' Compensation and Employers Liability Insurance Policy and/or Rule V-A and/or Rule IX of the Massachusetts Workers Compensation and Employers Liability Insurance Manual. The following four scenarios are addressed:

Scenario One

If the policyholder can present satisfactory evidence to the auditor that the Sole Proprietor or Partnership is a bona fide employer, then no additional payroll shall be picked up on the policyholder's policy. Evidence to establish whether a sole proprietor or partnership is a bona fide employer could include, but not be limited to, such things as: contracts between the policyholder and the sole proprietor or partnership; invoices from a sub contractor to the general contractor; W2 Forms; Employer Identification Numbers (EINs); 940 Forms: Employer's Annual Federal Unemployment (FUTA) Tax Returns; and/or 941 Forms: Employer's Quarterly Federal Tax Returns.

Scenario Two

If the Sole Proprietor or Partnership has no employees, but the policyholder can prove that the Sole Proprietor or Partner(s) meets the following three-part test set forth in G.L. c. 149, section 148B that distinguishes independent contractors from employees:

1. The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
2. The service is performed outside the usual course of the business of the employer; and
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed

then no additional payroll shall be picked up on the policyholder's policy.



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Scenario Three

If the policyholder fails to present satisfactory evidence (scenario one above) to the auditor that the Sole Proprietor or Partnership is a bona fide employer; and/or the policyholder cannot prove that the Sole Proprietor or Partner(s) meets the three-part test that distinguishes independent contractors from employees (scenario two above), then all payments made to the sole proprietor and/or partnership shall be picked up on the policyholder's policy in accordance with the Massachusetts Workers' Compensation and Employers Liability Insurance Manual, Rule IX.C.

Scenario Four

If during an audit, the carrier determines that their policyholder has hired a Sole Proprietor With Coverage Election ("*<NAME>* is covered by the workers' compensation policy" is shown on the Certificate of Insurance), OR a Partnership With Coverage Election for any or all Partners, then no additional payroll shall be picked up on the policyholder's policy.

In those situations where the Certificate of Insurance is silent on coverage elections, the auditor shall ask additional questions and obtain additional documentation from the policyholder to determine the appropriate treatment at audit of the sole proprietors or partnerships hired by the policyholder.

This article was based on Workers' Compensation Rating and Inspection Bureau of Massachusetts Circular Letters 2045, 2057 and 2071 available at www.wcribma.org.

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