August 9, 2013

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R.C. 2344

To: The Members of the Board

Classification for Uninsured Subcontractors and Individuals
Effective Date: August 1, 2013

In accordance with the authorization of the NYCIRB Underwriting Committee, and approval by the New York State Department of Financial Services, an update to Manual Rule IX.C.3.a, regarding the classification procedures for Uninsured Subcontractors and Individuals, has been implemented. These changes are effective for new and renewal business with effective dates on or after August 1, 2013.

This amendment provides clarification on issues regarding the proper classification to be applied to uninsured subcontractors or individuals identified as employees when performing construction and non-construction operations. The new language stipulates that subcontractors and individuals in construction and non-construction be classified under the appropriate classification on the policy if the phraseology of the classification includes the subcontracted operation or falls under the classification to which the operations pertain if the phraseology does not include the operation. There is also new language providing clarification for executive officers who exclude themselves from this coverage.

Furthermore, Rule IX.C.3.b will now include individuals determined to be employees at the same percentages as uninsured subcontractors. Prior to this change, uninsured subcontractors, where payroll cannot be determined, were included on audits based on whether or not there is labor only performed by the subcontractor (90% of the contract price), whether there is labor and materials furnished by the subcontractor (50% of the contract price) or when mobile equipment with drivers is furnished by the subcontractor (33 1/3%). The prior approach did not address remuneration for individuals determined to be employees.
An updated manual Page (R-60) reflecting these changes is included with this Bulletin. Additionally, these changes are also included in an updated version of the New York Workers Compensation & Employers Liability Manual which is available via the Board’s website at: www.nycirb.org.

Very truly yours,

Monte Almer

President

WVT:tg
Encl.
5. Assignment of Remuneration

The remuneration of sole proprietors or partners shall be assigned to classifications under the rules of this manual.

C. SUBCONTRACTORS/INDEPENDENT CONTRACTORS

1. Law on Contractors, Subcontractors and Owners of Timber

The New York Workers’ Compensation Law provides that contractors shall be responsible for payment of benefits to employees of uninsured subcontractors. It further provides that owners of timber other than farm lands shall also be responsible for payment of benefits to employees of uninsured contractors or uninsured subcontractors.

2. Coverage

This statutory responsibility is automatically insured by the Standard Policy issued to the contractor or owner of timber.

3. Premium for Uninsured Subcontractors

a. The contractor shall furnish satisfactory evidence that the subcontractor had workers compensation insurance in force covering the work performed for the contractor. For each subcontractor for which such evidence is not furnished, the additional premium to be charged on the policy which insured the contractor shall be the premium computed by assigning the appropriate classification to the entire payroll expended by the subcontractor for the subcontracted work.

Note: For the purpose of this rule any uninsured subcontractor, or individual determined to be an employee, who performs construction/contracting work shall be classified under the classification which would apply to the subcontractor’s operations had only such operations been insured under a separate policy. If the contractor’s code includes the subcontracting operation(s), then the subcontractor or individual is assigned to that code.

For non-contracting operations any uninsured subcontractor, or individual determined to be an employee, shall be classified under the appropriate classification on the policy if the phraseology of the classification includes the subcontracted operation (such as entertainers in a restaurant/bar or Drivers) or under the classification to which their work pertains if the classification does not include the operation in the phraseology.

Any executive officer, sole proprietor, partner or member of an LLC, etc., who has been excluded from coverage under their own company policy, via an exclusion endorsement, shall be included on the policy of the hiring company when they perform duties that pertain to the operations of the hiring company.

b. The contractor shall provide a complete payroll record of the employees of each uninsured subcontractor, or individual determined to be an employee, for purposes of establishing the appropriate premium. If the contractor does not supply the payroll records of its subcontractor, premium shall be determined as follows:

(1) 33 1/3% of the subcontract price shall be considered payroll if the subcontract is for mobile equipment with operators (such as but not limited to earth movers, graders, bulldozers or log skidders).

(2) 50% of the subcontract price shall be considered payroll if the subcontract is for labor and material.

(3) 90% of the subcontract price shall be considered payroll if the subcontract is for labor only.

Exception to 3.b. above:

In any case where investigation of a specific job discloses that a definite amount of the subcontract price represents payroll, premium shall be based on that amount.