

BULLETIN

Empire State Agricultural Compensation Trust

October 2007

INDEPENDENT CONTRACTORS

Many of you have asked why our workers' compensation insurance auditor has picked up an additional premium charge for a contractor or sub-contractor who performed work for you during the past year.

This bulletin contains information that will clarify when the Workers' Compensation Board requires that charges are made on your policy for an Independent Contractor.

What is an independent contractor? An independent contractor is someone whose business is providing services to different customers. Generally, the independent contractor provides services that you cannot, or prefer not to, provide for your business due to cost, lack of expertise, or employees. For example, upgrading or replacing the electrical system in your barns, or installing new milking equipment would be services an independent contractor may provide.

When does an independent contractor become an employee of mine? Unfortunately, there is no simple answer to this complex question. Under workers' compensation law, a contractor may be considered an employee of yours, and therefore subject to coverage by **your** workers' compensation policy, if:

- They do not have a workers' compensation policy issued in their business name,
- You, or your employees, provide direction, control or supervision over their work,
- You provide materials, tools and equipment to be used in the job,
- The hours, duties and place of work are set by you,
- The contractor receives a regular salary (hourly, daily, weekly or monthly),
- The relative nature of the work performed is an integral part of your business, or if the work is normally performed by your employees.

If during the audit process, our auditor determines that an independent contractor meets any of the above criteria, that contractor may be considered an employee of yours. The auditor will add their payroll and charge a premium based on the work performed by the independent contractor for you. If the

independent contractor or their employees suffer any losses, these losses will be paid under your workers' compensation policy.

Why do I have to pay this? This is a concern for all businesses required to carry workers' compensation coverage. The intent is to reduce an insurance coverage gap between your workers' compensation policy and your general liability policy when work is completed for you by independent contractors, who are not required to carry workers' compensation coverage.

Most states have laws which impose workers' compensation liability for injuries that the independent contractor or his employees incur on the principal employer. In our case that is the farm owner hiring an independent contractor. The purpose of these laws is to protect the employees of an **uninsured** independent contractor by placing the ultimate responsibility on the principal employer – **you**.

What can I do to avoid this situation and keep my workers' compensation costs under control?

First and foremost, when hiring a contractor demand a copy of a **current** Certificate of Insurance from the contractor. This should be kept on file with your workers' compensation insurance policy and provided to the auditor. The contractor's Certificate of Insurance will provide the auditor with proof that the contractor had workers' compensation coverage for his employees during the time work was performed for you.

Additionally, while the contractor is performing the work you contracted, it is extremely important that you and your employees **avoid**:

- Providing supervision or control of the job,
- Providing materials, tools or equipment that you own to the contractor,
- Working with, or assisting, the contractor or their employees in completing the job.

At Agri-Services Agency, we look forward to working with you on these important issues which help to control our workers' compensation costs. If you have any questions, we encourage you to call our Customer Service Center at 1-800-654-8840.

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