

Eight Commonly Asked Questions Regarding Workers' Compensation Coverage for Common Interest Developments

So your Association doesn't have any employees. Should you still maintain a Workers Compensation policy? Absolutely... here's why.

1. Why do we need any Workers' Compensation Coverage, we don't have any employees?

The State of California Workers' Compensation Appeals Board is extremely liberal in its interpretation of what might constitute an "employee/employer" relationship. A common interest development can be deemed to be the employer in the most unlikely circumstances. Most condominium associations are looked upon by the Courts as being "multi-million dollar corporations" and, thus, a deep pocket and an easy target in the event of a work related injury upon the premises. If an employee of a vendor is injured on the premises and there is no other Workers' Compensation policy in effect, the Workers' Compensation Appeals Board could look to the Association to pay the damages. Likewise, if the Association hires any part time handymen and any of these individuals are injured on the premises, their benefits could fall under the Workers' Compensation policy covering the Association.

Without a workers compensation policy, the benefits to the insured worker are paid under an "uninsured pool" and a demand letter sent to the homeowners association. If the association doesn't have the financial wherewithal to pay the claim (which can run tens of thousands of dollars), a lien is placed on the entire project.

2. What constitutes an "independent contractor" to a Workers' Compensation insurance carrier?

Insurance carriers look at the existence of two items as a way to help establish an "independent contractor" status:

1. A contractor's license from the State of California.
2. A Workers' Compensation policy in force for the entity doing business.

3. Won't the Workers' Compensation coverage that our management company carries protect us - why do we need our own?

A Workers' Compensation policy covering a management company can only protect that single entity. (In order for a second entity to be named on a Workers Compensation policy, it must own at least 50% of the stock of the second entity). As a result, the Workers' Compensation policy covering a management agent cannot be modified or endorsed to extend to a homeowners association client.

4. Why are the premiums "estimated" ...can't you give us an exact premium?

Workers' Compensation premiums are based on the actual payroll activity. Since it is impossible to predict the future (the "actual" activity is not known when the policy is issued), the initial premium will be estimated - based on what the carrier believes the payroll will be for the upcoming year. Since payroll can vary, the premiums can go up or down. A basic policy

(with minimum payroll activity) will have a minimum audit premium which can be as low as \$988 per year. After the policy period, the payroll activity (if any) is audited. In many cases the audit will be conducted by mail using a Self Audit Form completed by the Board or the management agent. Any payments to employees and uninsured contractors will be based on the Homeowners Association classification (9066). As long as the premium generated doesn't exceed the minimum, there will be no additional charge. If the premium should exceed the minimum, there will be a bill generated for the previous term, in addition to a bill generated for the current term.

5. What rate should we anticipate paying?

Handymen, gardeners, security guards and other temporary help can be rated under the Homeowners Association classification (9066). The rates change from year to year and will vary from carrier to carrier. If the current rate for Classification 9066 from a given carrier is \$13.73 for every \$ 100 of payroll. Based on that rate, if you hired a handyman that received \$600 per month (\$7,200 per year), the cost of Workers' Compensation insurance would be \$988.

6. What can we do to keep our rates low?

The only way to ensure your association's workers compensation rates will be at their lowest is to make certain vendors coming on to the premises have their own Workers' Compensation coverage. It's not just a prudent business practice, it's also the best way to insure that your Association will never have to pay additional premiums (above the minimum.) To ensure that your vendors always have workers compensation coverage, your contracts with your vendors should require that the vendor provide you or your management agent with a Certificate of Insurance evidencing Workers' Compensation (and Comprehensive General Liability Coverage) prior to coming onto the premises. The Board or the management agent should maintain a file of certificates of insurance for all vendors coming on to the premises.

7. Is the Board of Directors covered under the Workers' Compensation policy?

Generally, the Board of Directors as officers of the corporation will be specifically excluded.

8. If the Board is covered, how are they rated? How much will it cost?

Check with your carrier. Some carries do allow for non-profit board members to be covered at a modest premium charge. Some consideration should be given before taking this step – including the advice of legal counsel.

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For a more detailed description of the policy conditions and exclusions, please consult the policy itself.