Increasing Compliance Through Education

"Learning is not attained by chance, it must be sought for with ardor and diligence."

Abigail Adams

Does an employer need to know about Florida’s coverage requirements before starting a business in Florida? The answer is yes! And, at the Division of Workers’ Compensation, Bureau of Compliance, one of our top priorities is to educate employers on Florida’s coverage requirements, which helps ensure employees are protected in the event of an injury or illness, and helps employers avoid potential enforcement actions and monetary penalties. We try to reach as many employers as possible through our educational and outreach efforts. We have online resources and learning tools (such as this newsletter) available to all employers. As we strive to continually adjust to Florida’s growing economy, our education efforts for our stakeholders grow and evolve. Last year through our training efforts, over 200 continuing education credits were issued to state licensed contractors. The Bureau partners with the Office of Safety & Health Administration (OSHA) and the University of South Florida Safety Consultation Program to provide employers with necessary information on remaining in compliance with state and federal requirements. Not only are our trainings provided through our sponsored events, but we also are available throughout the state to attend external events where our expertise may be of value.

The Bureau of Compliance is actively engaged in identifying other opportunities to educate employers about the coverage requirements; such as when a business incorporates with the Division of Corporations. We hope these types of front-end initiatives will result in more newly established businesses understanding and complying with the workers’ compensation law.

Should you wish to have the Bureau of Compliance attend your event, simply reach out to the training team via email at BOCSeminars@myfloridacfo.com or by phone at (239) 461-4077. If you have a topic that you would like to see covered in our trainings or newsletter, please let us know. We welcome feedback or suggestions regarding the workers’ compensation system in Florida. Stay tuned for more editions with helpful and insightful information.

Aysia Elliott
Editor
When an employer is found in violation of the workers' compensation coverage requirements, they are issued a penalty. The penalty is calculated by determining the amount of premium the employer should have paid had they had the appropriate coverage for non-compliance periods within the audit period, which is usually the preceding two years, and then multiplied by the statutory penalty factor, which is currently two times the avoided premium.

In order for the Department to determine the amount of premium the employer should have paid; an audit will be conducted of the employer's business records to determine the amount of payroll or labor cost expenses the employer incurred during the audit period.

Employers are required to maintain many different types of business records such as income taxes, financial statements, general ledgers, payroll reports and employment records, bank account statements and check images as well as any proof of coverage for any subcontractors. For a complete listing of business records refer to Rule 69L-6.015, Florida Administrative Code.

Once the employer submits all their records to the Department, the case is assigned to an auditor, who will review the records and workers' compensation coverage databases to determine the periods of non-compliance. When all the data is received, the auditor will review the records for further documentation that may have been provided to clarify any expenses such as receipts, invoices, contracts, and proof of coverage.

If the records are complete and sufficient, then the payroll and/or labor expense amounts from the records will be used to calculate the penalty. If the records are incomplete or insufficient for any non-compliance periods, then the penalty will be calculated by imputing the payroll, which is done by applying the state average weekly wage multiplied by 1.5, to each identified employee and business owner(s).

The auditor will then assign a class code to each individual or company that is to be included in the penalty to determine the approved manual rate, which is used to calculate the premium.

The class code is a code established by the National Council on Compensation Insurance (NCCI) based on job descriptions or duties. Each class code has an approved manual rate assigned and usually the higher the exposure of risk the higher the rate will be. An auditor will assign the applicable class codes based upon the job descriptions provided within the employer's business records. However, if the auditor is unable to determine class codes for the different individuals or companies found in the records, the highest rated class code will be assigned based on the investigator's actual physical observation of work activities during the investigation.

After the premium is calculated, it is multiplied by two to determine the final penalty amount prior to any credits being applied.

How Can Employers Reduce Their Penalties?

Employers, who have not previously been issued a penalty are eligible to reduce their penalties with two different credit options. Both types of reductions can be applied to a penalty, but the penalty will never be less than one thousand dollars, as this is the statutory minimum amount.

The first credit option to reduce the penalty is available to employers who provide complete and sufficient business records within ten business days of service of the Request to Produce Business Records for Penalty Calculation. The Department uses those records to calculate the penalty and will reduce the penalty by twenty-five percent. The purpose of this credit is to incentivize the employer to provide business records, so the department does not impute the employer’s payroll.

The second credit option is available to employers who come into compliance by purchasing a workers’ compensation policy or by entering into an employee leasing contract with a licensed employee leasing company. To receive the credit, the employer must provide the required coverage documentation and proof of payment to the Department within twenty-eight calendar days after service of the Stop-Work Order or first order of penalty assessment. If an employer purchases a workers’ compensation policy, the amount of the credit will be the amount of the initial payment made towards that policy. If an employer secures workers’ compensation coverage by entering into an employee leasing contract, it must be with a licensed employee leasing company. The employer must provide the first reported payroll to the leasing company; however, the only amount that will be reduced from the penalty will be the amount for the workers’ compensation premium paid to the leasing company. The purpose of this credit is to incentivize the employer to obtain coverage as soon as possible.
DISTRICT SPOTLIGHT: The Panhandle

The Bureau of Compliance (BOC) has seven district offices throughout the state. One of the district offices is located in Pensacola (this is District 1A). District 1A also includes regional offices in Fort Walton Beach, Panama City, and Tallahassee, and is currently staffed with eight investigators. These investigators, comprised of former law enforcement officers, businessmen, and college graduates are responsible for ensuring employer compliance from the stretch of I-10 from the Florida state line to I-75.

Investigators in the panhandle are very familiar with weather-related events and the effect they have on the construction industry in the region. Most recently, investigators in District IA have worked tirelessly in response to Hurricane Michael. During the months immediately following Hurricane Michael, the investigators spent time educating contractors and homeowners about Florida’s requirements under Chapter 440, F.S. Compliance literature was distributed to contractors, disaster relief centers, and local building authorities.

During January 2019, the district (along with their Jacksonville peers) and investigators from the Department of Business and Professional Regulations spent three days canvassing Panama City and other hurricane damaged areas to ensure the contractors working in the area were compliant with Florida’s workers’ compensation law. There were 247 investigations conducted at 191 locations across the area. A total of 58 enforcement actions were issued to employers who were not compliant with the workers’ compensation law.

Routine compliance checks across the region continue and investigators continue to work alongside industry partners to not only ensure employer compliance, but to protect the citizens of Florida during their reconstruction efforts.

More information on disaster relief can be found on our website at: https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/DisasterAssistENG.pdf

Building Your Tool Kit:

This issue’s featured tool is our Non-Compliance Referral Database. This tool allows users to report an employer suspected of failing to secure workers’ compensation insurance coverage. Simply supply the requested information through the link provided; referrals may be submitted anonymously; user contact information is not required. Each referral is assigned a unique reference number and the user can track the status of their referral.
USEFUL LINKS:
Our Obtaining Insurance Coverage resource link can be used to help identify Insurance Agents, find approved insurance carriers, or contact the Joint Underwriting Association.

FAST FACTS:
In February 2019, on average, our Coverage Assistance Program was used over 400 times a week to assist employers in finding coverage for their business.

DIVISION OF WORKERS' COMPENSATION
BUREAU OF COMPLIANCE

The Division’s Website Address:
www.MyFloridaCFO.com/Division/WC/

Bureau of Compliance Customer Service:
1-850-413-1609

Bureau of Employee Assistance & Ombudsman Office (Assists Injured Workers):
1-800-342-1741

For Feedback or Suggestions:
BOCFeedback@MyFloridaCFO.com

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