

Top 10 Things to Know About Writing Workers' Comp for Contractors in Florida

Writing workers' compensation coverage for clients in the construction industry can be challenging. If your agency serves construction clients, here are the top 10 things you should know about writing workers' comp for contractors.

- 1. What businesses are considered "construction?"** The [list of construction codes](#) is set by the State. If any portion of a company's operations is in a class code on the construction list, the entire business is classified as construction. And be aware that some operations on the construction list are not commonly thought of as construction. For example, landscaping services are on the construction list, so if your client has both lawn care and landscaping operations, the entire business is "construction."
- 2. If a business is in the construction industry, do they have to have a workers' comp policy?** Basically, every worker in the construction industry must either be covered by a workers' comp policy or have an active exemption issued by the State. Construction industry businesses must have a workers' comp policy unless the business has only exempt officers and no other employees. A construction business with even 1 employee (whether full-time or part-time) must have a workers' comp policy to cover that employee. Sole proprietors cannot exempt out of coverage and so must have a workers' comp policy.
- 3. Are construction industry businesses responsible for their subcontractors' workers' comp?** Yes. Contractors must ensure that any sub with employees has a workers' comp policy to cover those employees, even if the owner is exempt. Subs with only exempt officers must have valid exemptions. If any subcontractor has non-exempt employees but does not have a workers' comp policy, the contractor hiring that sub will be charged premium by its insurance company to cover the sub's employees.

To protect themselves, your construction clients should independently verify the Certificates of Insurance and exemption cards they receive from their subs using the State [Proof of Coverage database](#). Insurance policies can be cancelled and exemptions expire. If your client sees on the State database that the workers' comp policy for one of their subs has been cancelled, they should require the sub to get their coverage reinstated before being allowed on the job site.

Your clients can also sign up to be notified by the State if the workers' comp policy or an exemption for one of their subs is cancelled or expires on the State [Construction Policy Tracking Database](#).

4. **Who can exempt out of workers' comp in a construction business?** Up to 3 owners/officers of a corporation or limited liability company with at least 10% ownership of the company. Employees who are not owners cannot get an exemption and must be covered by a workers' comp policy. Sole proprietors are not eligible for exemptions and must be covered by a workers' comp policy.
5. **How long are exemptions valid?** In the construction industry, exemptions cost \$50 and must be renewed every 2 years. The State notifies all exemption holders when their exemptions are about to expire. Allowing an exemption to lapse can mean a visit from a state compliance officer and having to pay premium on the officer's salary received during the expired exemption.
6. **Is it legal for a construction business to have exempt officers only with no workers' comp coverage in place?** If a company has 3 or fewer owners who all hold exemptions and there are no other employees, that company is complying with workers' comp requirements. But if that company hires a new employee (even part-time), uses a day laborer, or brings anyone else to a jobsite, they are breaking the law by not having workers' comp coverage for that employee. And the contractor will now be responsible for paying workers' comp premium on that

worker.

7. **Why is it important for my clients to file their corporate Annual Report with the State of Florida?** Corporations and LLC's must file an Annual Report with the State of Florida by May 1st of every year. Companies that do not file their Annual Report are dissolved by the State, and the officers can lose their exemptions.

8. **If my client uses a one-person sub that works under an exemption, is my client's policy still eligible for Class Code 5606 (Executive Supervisor)?**
Using one-person exempt subs can disqualify your client from Class Code 5606. The rate for 5606 is much lower than other construction class codes, but it is difficult to qualify for. It is intended only for workers who supervise the supervisors on the job site and cannot be used for anyone who actually goes to the job site. The code requires a middle layer of supervision between the job site employee and the supervisor. And using a one-person sub with an exemption disqualifies a contractor from receiving this code because the one-man sub cannot provide that crucial middle layer of supervision.

9. **What are the requirements for out-of-state construction businesses doing work in Florida?** An out-of-state construction business doing work in Florida must obtain either a stand-alone Florida workers' comp policy or a Florida endorsement to their out-of-state policy to cover their operations in Florida.

Should my construction clients be concerned if one of their subcontractors uses a PEO/employee leasing? It is increasingly common in the industry for subcontractors to lease their employees from a Professional Employer Organization (PEO). In this arrangement, the subcontractor signs a contract with an employee leasing company where the PEO is actually the employer and provides workers' comp coverage for the leased employees. The subcontractor does not have any employees (at least it is not supposed to) and has no insurance policy in place. But here's the loophole: PEOs only provide workers' comp insurance to employees they have been given advance written notice of and which they have accepted as their employee. If your client uses a sub

whose coverage is with a PEO and the sub hires anyone, that worker is not covered by the PEO's workers' comp policy unless and until the PEO agrees to cover that worker. Which means if your client hires a subcontractor that uses a PEO, if that sub hires someone without getting clearance and acceptance from the PEO, that employee now is the responsibility of your client, both in terms of paying premium and in terms of any claims that may occur.