- *Subcontractors*
- *General Contractors*
- *Independent Contractors*

General Information Regarding Rights and Responsibilities Under the Act

Michigan Department of Consumer & Industry Services
Bureau of Workers' Disability Compensation
PO Box 30016
Lansing, Michigan 48909

September 2003

1. Which employers must carry workers' compensation coverage?

418.115

(a) All private employers regularly employing 1 or more employees 35 hours or more per week for 13 weeks or longer during the preceding 52 weeks.

(b) All private employers regularly employing 3 or more employees at one time. (This includes part-time employees.)

(c) Agricultural employers if they employ 3 or more employees 35 hours or more per week for 13 or more consecutive weeks.

(d) Householders employing domestic servants if they employ anyone 35 hours or more per week for 13 weeks or longer during the preceding 52 weeks.

(e) All public employers.

2. What must an employer do to satisfy the requirement for workers' compensation coverage? *418.611*

(a) Purchase a policy from a licensed and approved insurance carrier. Contact your insurance agent for further information.

(b) Purchase a policy through the assigned risk pool. Your insurance agent will be able to assist you.

(c) Secure coverage through a self-insured group fund. Contact the Bureau of Workers' Disability Compensation for a list of the self-insured group funds.

(d) Receive authorization from the bureau director to be an individual self-insurer. Contact the bureau for further information.

(e) File an exclusion form with the bureau director. Contact the bureau to request an exclusion form.

The phone number and address for the above references can be found on page 6 of this booklet.

3. Who is an employee? *418.161*

An employee is any person in the service of another, under any contract of hire, express or implied. A partner is considered an employee of the partnership, a corporate officer is considered an employee of the corporation, and a member who is a manager is considered an employee of a limited liability company.

A sole proprietor (self-employed individual) working in his or her sole proprietorship is never an employee of that business. Domestic servants or agricultural employees who are relatives living on the premises of the employer are not considered employees.

4. What is an exclusion form? *418.161*

It is a form provided by the Bureau of Workers' Disability Compensation (Form BWC 337) which is completed by the employer and filed with the bureau. The form may be used by employers who only employ persons who can be excluded under the Workers' Disability Compensation Act. The proper filing of this form allows the employer to comply with the insurance requirements of the Act without purchasing a policy of workers' compensation insurance. After the completed form is filed with the bureau, the excluded employees are barred from receiving workers' compensation benefits.

5. Which employers may use an exclusion form? *418.161*

An employer may use an exclusion form <u>only if all its employees can be excluded</u> according to the Workers' Disability Compensation Act. The following employers may exclude employees:

(a) Sole Proprietorship—If it has one or more employees and all employees are the spouse, child, or parent of the sole proprietor.

A sole proprietor is not an employee of that business. The sole proprietor cannot sign an exclusion form as that person is not considered an employee which can be excluded under the Workers' Disability Compensation Act.

(b) Partnership—If all employees are partners.

(c) Stock Corporation—If all employees are corporate officers and own 10% or more stock in the corporation.

(d) Limited Liability Company—If all the employees are members and are also managers and own 10 percent or more interest in the business.

6. What is the purpose of an exclusion form?

By filing an exclusion form a business certifies that it fits into one of the categories described in Question 5 with respect to its employees and that it, therefore, does not need workers' compensation insurance for its employees. The exclusion form does not establish anything about the relationship between that business and some other contractor.

7. An employer has four full-time employees. However, only two of the employees can be excluded under the Workers' Disability Compensation Act. Can the employer properly use the exclusion form?

No. The employer must purchase a policy of workers' compensation insurance. The employer then may exclude one or both of the employees from the policy which will save the employer premium dollars. Contact your insurance agent for details.

8. May a sole proprietor with no employees use an exclusion form to prove that he or she is an independent contractor?

No. The bureau will return all exclusion forms filed by a sole proprietor with no employees. Question 5 explains which employers may use an exclusion form. Question 10 lays out some of the criteria that must be met in order to be considered an independent contractor.

The bureau will not provide exclusion forms to sole proprietors with no employees and will return all forms that are submitted by the sole proprietor with no employees.

9. Can a sole proprietor be covered under a workers' compensation policy?

No. A sole proprietor cannot receive workers' compensation benefits under a policy issued to the sole proprietorship or the general contractor (principal contractor) when the sole proprietorship operates as an independent contractor.

However, individuals who choose to establish their business as a partnership, corporation, or limited liability company may be covered as employees and may receive workers' compensation benefits from their partnership, corporation, or limited liability company. Information on forming partnerships, corporations, or limited liability companies may be obtained by phoning the Michigan Jobs Commission Business Startup Assistance Office at **(517) 373-9808.**

10. Who is an independent contractor? *418.161*

An independent contractor is one who maintains a separate business and holds himself or herself out to and renders service to the public.

Generally, a person cannot become an independent contractor just because he or she wants to be, or because an employer wants the person to be an independent contractor. It is not enough that the employee and the employer agree. If a person only works for one business and is directed and controlled by that business, the person probably is an employee and not an independent contractor.

The "economic reality test" is a body of case law which defines an independent contractor. Consult your attorney for further explanation.

Question 11 discusses some key elements of an independent contractor relationship.

11. A general contractor employs a subcontractor which is a sole proprietorship with no employees. Can the insurance company auditor charge the general contractor premium on money paid to the subcontractor?

No. However, it is the responsibility of the general contractor to provide reasonable proof to his or her insurance company that the subcontractor is a sole proprietorship with no employees. The following proofs may be used. For additional proofs, see Bulletin 89-03 on page 7 of this booklet.

(a) The Federal Identification Number of the sole proprietorship.

(b) A copy of the written contract between the sole proprietorship and the general contractor.

(c) A list of other general contractors for whom the sole proprietorship has worked recently and/or is currently working for.

(d) A copy of the assumed name certificate which the sole proprietorship has on file with the county.

(e) Proof that the sole proprietorship is paid by the job and an IRS 1099 form is given to the sole proprietorship by the general contractor at the end of the year.

(f) A sworn statement from the sole proprietor that he or she has no employees.

(g) An advertisement that shows the sole proprietorship is available to work for others.

If the insurance auditor does not accept reasonable proof, the general contractor should request in writing another payroll audit from the insurance company. If the premium is not waived after the reaudit, the general contractor may appeal to the Michigan Commissioner of Insurance and request a hearing to resolve the premium dispute.

12. Can a general contractor require a certificate of workers' compensation insurance from its subcontractor?

If the subcontractor is a sole proprietorship with no employees, the Workers' Disability Compensation Act does not require a certificate of workers' compensation insurance. However, the general contractor may on a contractual basis require a certificate of workers' compensation to be provided.

This is a contractual issue not regulated by this bureau.

If the subcontractor is a sole proprietorship and has one or more employees, or if the subcontractor is a partnership, corporation, or limited liability company, the general contractor should require a certificate of workers' compensation insurance or a copy of a properly-executed exclusion form.

If a subcontractor carries no workers' compensation insurance and does not have an exclusion form on file with the bureau, any work-related claim filed by the uninsured subcontractor's employee may become the responsibility of the general contractor. Michigan law does allow the workers' compensation liability to flow from an uninsured subcontractor to the principle. In this situation, the general contractor retains the right to sue the uninsured subcontractor for reimbursement of all compensation paid to the uninsured subcontractor's employee.

13. Can an employer withhold money from an employee's wages to pay workers' compensation insurance premiums?

No, **absolutely not!** Workers' compensation is an employee benefit which **must** be provided by the employer.

To request exclusion forms, information on self-insurance, and address for filing exclusion forms:	**Bureau of Workers' Disability Compensation** **Michigan Department of Consumer & Industry Services** **PO Box 30016** **Lansing, MI 48909** **(517) 322-1195**
If you have questions on insurance companies, contact:	**Michigan Insurance Bureau** **Department of Consumer & Industry Services** **PO Box 30220** **Lansing, MI 48909** **(517) 373-0240**
For information on work place safety programs, contact:	**Consultation Education and Training** **Michigan Department of Consumer & Industry Services** **PO Box 30015** **Lansing, MI 48909** **(517) 322-1809**
For MIOSHA information, call	**1-800-866-4674**

If you have questions regarding a specific workers' compensation claim, or if you would like information regarding the appeal process and your rights under the law, contact a workers' compensation mediator at the office nearest you. A listing of these offices is on the back page of this booklet.

MICHIGAN INSURANCE BUREAU BULLETIN 89-03

RE: Subcontractors and appropriate premium charges.

Because the individual sole proprietor subcontractor is not eligible for benefits under the contractor's workers' compensation policy, the Commissioner of Insurance (Commissioner) deemed this an improper interpretation and withdrew approval of Rule IX-D that was filed by the Facility for the residual market. The withdrawal of approval prompted the Facility to file revisions to the rule to address problem areas. After negotiations between the Facility, the Insurance Bureau and the W.C. Bureau, the following revised language was implemented March 1, 1989 for the residual market business:

1. Law on contractors and subcontractors.

The workers' compensation law provides that a contractor is responsible for the payment of compensation benefits to employees of its uninsured subcontractors.

A subcontractor is one who maintains a separate business and holds himself or herself out to and renders service to the public.

2. Coverage.

This statutory responsibility is automatically insured by the Standard Policy issued to the contractor.

3. Premium for uninsured subcontractor with employees.

The contractor shall furnish satisfactory evidence that the subcontractor with employees had workers' compensation insurance in force covering work performed by the subcontractor or provide a copy of an exclusion form (BWC 337) which has been properly filed with the Bureau of Workers' Disability Compensation if the subcontractor qualifies for the use of such exclusion form. For each subcontractor with employees for which such evidence is not furnished, additional premium shall be charged on the policy which insured the contractor as follows:

a. The contractor shall provide a complete payroll record of the employees of each uninsured subcontractor. Premium on such payroll shall be based on the classifications which would have applied if the employees of the subcontractor had been employees of the contractor.
b. If the contractor does not supply the payroll records of its subcontractors who have employees, the full subcontract price of the work performed during the policy period by the subcontractor shall be establilshed as the payroll of the

subcontractor's employees. The additional premium shall be charged on that amount as payroll.

Exception to 3b above

If investigation on a specific job discloses that a definite amount of the subcontract price represents payroll, such amount shall be the payroll for the additional premium computation. In contracts for labor and material, the payroll shall not be less than 50% of the subcontract price. In contracts for labor only, the payroll shall be established as not less than 90% of the subcontract price.

***Piece Work, Drivers, Chauffeurs Under Contract**

This rule on subcontractors does not apply to contracts for piece work, nor to drivers and/or chauffeurs on vehicles engaged under contract:

(1) The entire amount paid to piece workers shall be the payroll as provided in Rule V.

(2) The rules on Special Classification in Rule IV apply to drivers and/or chauffeurs on contract vehicles.

c. If an experience modification has been established for the contractor, such experience modification shall be applied to the premium developed for the uninsured subcontractor.

4. Premium shall not be charged for a subcontractor which is a sole proprietorship with no employees if the following criteria establishes that the particular person is, in fact, a subcontractor and not an employee. The burden of proof rests with the contractor.

5. Criteria to be used to determine subcontractor status.

The criteria to be considered in determining whether an individual is an employee or subcontractor is based upon reasonable proof provided to the carrier. Some specific factors to establish the relationship between the general contractor and the subcontractor follow:

a. Factors to determine if the subcontractor maintains a separate business.

1. A federal identification number of the subcontractor.
2. A copy of an assumed name certificate filed with the county.

3. Copies of the subcontractor's articles of incorporation, partnership papers, or articles of organization for limited liability companies.
4. Subcontractor received an IRS 1099 form in lieu of a W2 form.
5. The subcontractor maintains its own separate place of business.
6. The subcontractor furnishes all its own materials and equipment to perform the job tasks.
7. Copy of a written contract which spells out an employer/employer relationship.
8. The subcontractor can realize a profit or suffer a loss as a result of services rendered.
9. The subcontractor has the right to hire or fire its employees without securing permission from a general contractor.

b. Factors to determine if the employer holds itself out to and renders service to the public.

1. The subcontractor is listed in the yellow pages and/or advertises in newspapers, trade journals, on TV or on the radio.
2. List of other general contractors or individuals the subcontractor worked for recently.
3. The subcontractor performs specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the specific jobs.

c. Other factors.

1. A sworn statement from the sole proprietor that the sole proprietorship has no employees.
2. The subcontractor does not primarily depend upon the payments from one general contractor for the payment of the individual's living expenses.

Offices to obtain information and/or ask questions regarding workers' compensation:

Detroit Cadillac Place 3026 West Grand Blvd. Ste 3-700 Detroit, MI. 48202 (313)456-3650	Escanaba State Office Building 305 Ludington Escanaba, MI. 49829 (906)786-2081
Flint Bristol West Center G-1388 W. Bristol Road Flint, MI. 48507 (810)760-2618	Grand Rapids 2942 Fuller Street, NE Grand Rapids, MI. 49505-3488 (616)447-2670
Kalamazoo 940 N. 10th Street Kalamazoo, MI. 49009 (616)544-4440	Lansing Area 2501 Woodlake Circle Okemos, MI. 48864-5976 (517)241-9393
Mt. Clemens Clemens Center 32 Market St. Mt. Clemens, MI. 48043 (586)463-6577	Pontiac NBD Building Suite 1310 28 N. Saginaw Pontiac, MI. 48342 (248)334-2497
Saginaw State Office Building 411-K E. Genesee Saginaw, MI. 48607 (989)758-1768	Toll free calls: 1-888-396-5041

Quantity; 15,000
Cost; $2,257.00 ($.15 each)
Authority; P.A. 349 of 1988

The Department of Consumer & Industry Services will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

"Serving Michigan...Serving You"

BWC-PUB 002 (9/03)