



Harry Dorvilier <hnrinc@gmail.com>

co payment allowed

18 messages

Eric Rogers <erogers@satty.com>
To: hnrinc@gmail.com

Thu, Mar 13, 2008 at 10:47 AM



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Acting Superintendent

The Office of General Counsel issued the following informal opinion on March 11, 2005 representing the position of the New York State Insurance Department.

RE: Independent contractors and workers' compensation coverage

Question Presented:

May an insurer providing workers' compensation insurance charge premiums to an insured for persons who have entered into independent contractor arrangements with the insured but who do not have their own workers' compensation coverage?

Conclusion:

There is case law to support an insurer's right to charge premiums for independent contractors of an employer if there is reasonable risk that the Workers' Compensation Board would hold that such persons are employees rather than independent contractors. However, whether a person is an independent contractor or an employee, or is otherwise exempt from the definition of employee under the Workers' Compensation Law are questions for the Workers' Compensation Board to determine.

Facts:

The inquirer represents a small for-profit corporation which offers real estate salesperson and real estate broker licensing classes. The instructors hired by your client have all signed independent contractor agreements with the school declaring that they are independent contractors and not employees. Your client's insurer has advised your client that your client will be charged for workers' compensation insurance for all instructors who do not produce a certificate of workers' compensation insurance.

Analysis:

Generally, a self-employed individual, who has no employees, is not required to maintain workers' compensation coverage. N.Y. WCL § 2(4). There is also an exemption from the Workers'

Compensation Law for ". . . persons engaged in a teaching or nonmanual capacity in or for a religious, charitable or educational institution . . ." N.Y. WCL § 3(group 18). However, whether the for-profit corporation's instructors are independent contractors or are excluded from the definition of employee pursuant to N.Y. WCL § 3 (group 18) are questions for the Workers' Compensation Board to determine.

There is case law to support an insurer's right to charge premiums for independent contractors of an employer "if there is reasonable risk that the [Workers'] Compensation Board would hold persons to be employees rather than independent contractors." Commissioners of the State Insurance Funds v. Rivington Farm Dairy, Inc., 16 A.D.2d 58, 225 N.Y.S.2d 486 (1st Dept. 1962). But see Matter of For-Med Medical Group v. New York State Insurance Fund, 207 A.D.2d 300, 615 N.Y.S.2d 399 (1st Dept. 1984) (holding that there was no reasonable risk that 35 doctors who maintained offices at petitioner's premises would be deemed employees rather than independent contractors by the Workers' Compensation Board).

Therefore, if there is a reasonable risk that the Workers' Compensation Board could conclude that the for-profit corporation's instructors are employees under the Workers' Compensation Law, the insurance company would be permitted to charge the insured premiums for such employees if they fail to provide proof of coverage under another policy.

We can not express an opinion regarding the potential determination of the Workers' Compensation Board as to whether the for-profit corporation's instructors are independent contractors or employees. Any questions regarding the interpretation of the New York Workers' Compensation Law should be addressed to the Workers' Compensation Board.

For further information you may contact Assistant Counsel Brenda M. Gibbs at the Albany Office.

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Thu, Mar 13, 2008 at 6:10 PM

[Quoted text hidden]

Harry Dorvilier <hnrinc@gmail.com>
To: tombailey@alterbarbaro.com

Mon, Jan 25, 2010 at 2:03 PM

----- Forwarded message -----
From: **Eric Rogers** <erogers@satty.com>
Date: Thu, Mar 13, 2008 at 9:47 AM
Subject: co payment allowed
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[Quoted text hidden]

Harry Dorvilier <hnrinc@gmail.com>
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Fri, Jan 29, 2010 at 11:16 AM