

The Wrong Workers' Comp Class Codes Can Cost You Big Time

Applying the wrong workers' comp class code to your employees can cost you money in a number of ways. If you apply the wrong class code deliberately to score a lower premium, an audit can lead to large fines and loss of coverage.

The Department of Labor has issued a proposed rule targeting one of the more pervasive, deliberative misclassifications: independent contractors. An independent contractor is generally defined as someone who sets his own schedules, owns his own tools and can work for other clients. In addition to depriving workers of their rights under the Fair Labor Standards Act, employers will try to lower their workers' comp premiums by classifying many high-risk and/or lower paying jobs as independent contractors, such as construction workers, truck drivers, and janitors. That way they can exclude those riskier class codes when calculating premium.

In large states such as California, there have been several high profile cases where employers under-reported payroll in the hundreds of thousands of dollars to avoid higher premiums. If discovered by an audit, deliberate misclassification can result in massive fines.. Some firms have defrauded insurance companies by tens of thousands dollars incurring between \$1 and \$5 million in fines.

DOL's proposed rule outlines a more specific economic analysis to determine whether a worker is an employee or an independent contractor. The new regulation is expected to assist both employers and workers. A final rule is expected in 2023.

But misclassification can also occur when an employer applies the wrong code to a specific job. All employees have a 4-digit classification code assigned to them. The code describes the kind of work being performed by the employee and the risk or hazard entailed. The risk component is a factor when determining the workers' comp cost. If a business wanted to commit fraud it simply changes the the job description from warehouse workers to clerical workers. An employer pays less premium for a clerical worker than for a warehouse worker driving a forklift. The less riskier the job, the lower the premium.

The National Council of Compensation Insurance (NCCI) provides classification codes for many states, but states, such as California and New York, have their own workers' comp rating bureaus and classification codes. If you're doing business in multiple states it's important to know both.

While workers' comp is a significant cost for employers, especially small ones, the costs of skirting the law are worse. Proper classification is essential if your business has one or more employees performing multiple jobs, or if you have two different businesses or corporations. Administrative errors regarding taxes or payroll, or failure to pay a workers' comp claim, can draw an audit.

Applying the wrong code unintentionally can also cause an employer to pay too much. If an employee's job description changes this can require a different classification code, entailing either more or less risk. Even the smallest change can necessitate a new code.

If you're unsure about how to classify your employees, consult your workers' comp broker.