

Manager/Supervisor Risk Management

#104– 11/6/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: COVERAGE TYPES (simple but boring)

The entity's insurance requirements list the standard types of coverage that the entity requires the contractor to carry, along with the limits of coverage for the particular policy. They include:

General Liability: the coverage found in the standard commercial general liability policy (CGL) protects against claims arising out of the non-auto negligence of the contractor. It is the most common coverage required, and should be a major red flag to find a business without general liability coverage.

Auto Liability: this coverage protects against claims arising out of the negligent operation of an auto, truck or mobile equipment. The State requires this coverage, so there is no excuse for a contractor not to have it. Contractors sometimes argue that they should not be required by contract to have the insurance because driving is not part of the contracted service. It should be taken as a given that once the plaintiff's attorney learns that the contractor was going to, or coming from work, the entity will be named in the action as a deep pocket, and forced to incur defense cost.

Workers' Compensation: the State requires that all employers cover their employees for injuries arising out of, and occurring in the course of their employment. This can be done by either purchasing an insurance policy, or having the State certify the employer as permissibly self-insured. There is a danger that the State could force the entity to drop down as an insurer if the contractor fails to have coverage for one of their injured workers. Contractors that do not have employees can be excused from the requirement, but should be constantly monitored to ensure that the owner is doing 100% of the work. An additional danger is having a contractor bring in a "sub-contractor." There are often significant issues over whether the injured worker is a sub-contractor, or whether they are really an employee. The status turns on a number of factors, primarily control, and is judged in hindsight after the injury, so it is better to just require the coverage whenever subcontractors are involved.

Professional Liability (malpractice): A licensed professional (doctor, lawyer, engineer, architect, etc) has a higher level of duty than the non-professional, and this type of policy responds to that higher duty level. Generally, unless the contract calls for services to be performed by a licensed professional, the general liability policy will be sufficient, and professional liability coverage should not be required.

Environmental Coverage: this is a growing area of concern. It should be required if hazardous substances are being transported or disposed of, and in those situations where hazardous substances might be encountered or released during the performance of the contract.

As stated before, a contractor that regularly works with California public entities should be expected to have the standard required coverages in place as part of their pre-existing insurance program.

Next topic: Additional Insured