

## Know if Your Client has a Multi-State Workers Compensation Exposure

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Claims against agencies sometimes deal with the lack of Workers Compensation (WC) coverage for an agency client's employee following a loss. Not only is there the usual situation where medical bills and loss of earnings need to be paid, but claims against an agency will often include a claim by their customer for reimbursement of fines the customer had to pay to a state regulatory authority because of a lack of coverage. It goes without saying that these types of claims can be expensive.

### **Be Especially Careful**

Many of an agency's commercial clients might have multiple locations or multiple job locations in various states. Carriers can vary on how they underwrite multi-state WC exposures and the policies may read differently in respect to what states are covered. It is in this area – the multi-state WC exposure – where agents need to be especially careful when procuring coverage for their customers. Large claims can result when it is discovered that a customer's employee does not have coverage in the state in which he was injured.

Common mistakes an agency can make include not knowing the extent of a customer's operations or assuming that the customer is hiring workers from the customer's home state when, in actuality, workers are being hired in other states. Most WC policies that are state-specific only apply to workers either hired in that state or injured in that state.

When securing WC coverage, it is important to ask specific questions regarding the geographical scope of operations and the nature of the workforce your customer employs. If the agency has a customer that has multi-state operations and WC coverage is required for each location, make sure that the agent has a license to sell insurance in all of the involved states. If a customer has operations where the work being performed is constantly shifting from one state to another, it would be advisable to obtain a WC policy with an "All States" endorsement.

### **The Agent Assumed ...**

Consider, for instance, the case where an agent's customer was working in three surrounding states. When the client's previous carrier "non-renewed" their WC coverage, the agent acquired coverage from a different carrier. The previous policy had an "All States" endorsement attached, while the new policy only covered WC for two of the three states. The agent assumed that employees used for work in the third state were hired in the home state of the client.

An employee who was hired in the third (uncovered) state was severely injured on the job and filed a WC claim, which was then denied by the carrier because no coverage had been purchased for that state. A general contractor, who was obligated to provide WC coverage if a subcontractor did not provide it, paid the WC claim. In turn, the general contractor sued the agency's client for the expenses related to providing coverage and the agency's client sued the agency.

Because the agency replaced a policy with an "All States" endorsement with a policy that only covered two states – and the agent failed to explain this change to the client – the claim against the agent was settled for \$275,000.

### **Know the Scope**

A similar claim involved a client that supplied farm workers to farms in two states.

The client had two different addresses, one in each state. The agent believed all workers the client supplied to various farms were hired in one state and only procured coverage for that state.

A foreign national working in the second state lost a leg in a farm accident. The WC carrier denied coverage because the injury did not occur in the covered state. Moreover, it appeared that the injured employee was not hired in the covered state.

The worker sued his employer directly because the WC defense could not be used. A verdict of almost \$4,000,000 was rendered against the agency's client. The client, in exchange for a partial release, assigned his rights to sue the agent to the injured party. The claim against the agent was eventually settled for \$550,000.

An agent that knows the scope of his client's operations by regular communications with the client can avoid scenarios like the examples above. For clients that have WC exposure in more than one location, it would be prudent to send a letter to the client asking them to inform you whenever there are changes to:

- 1) the size of their workforce
- 2) the geographical scope of their operations
- 3) the nature of work being performed