

## Important Notice of Change In Coverage and Premium

### Background

In 2008, the Tennessee General Assembly passed a law called Public Chapter 1041 requiring everyone working in construction to be covered on a workers compensation insurance policy, starting on December 31, 2009. This law was quickly repealed by the General Assembly in January 2010, however, in its place, the General Assembly enacted a new law – **Public Chapter 1149**. This new law becomes **effective on March 1, 2011**.

### New Coverage Requirements

It is important to note that this new law does **NOT** change the requirement that Tennessee employers engaged in construction with one or more employees **must provide coverage for those employees**. What is new in Public Chapter 1149 is that everyone (including the principal business owners) in the construction industry must be covered by workers' compensation insurance unless they meet specific criteria and take the necessary steps to become exempt from the coverage requirement under this new law.

The following individuals are eligible to apply for exemptions under the new law:

- Officers of corporation; provided that no more than three officers of one corporation shall be eligible for the exemption;
- Members of a Limited Liability Company (LLC); provided such member owns at least 30% of the company;
- Partners in a limited partnership, limited liability partnership or a general partnership; provided such partner owns at least 30% of the partnership;
- Sole proprietors; or
- One of three owners of a family owned business entity.

If you meet one of the above criteria, you may obtain an exemption by registering with the Tennessee Secretary of State (<http://tnbear.tn.gov/wc/>) and getting listed on the Construction Services Provider Exemption Registry. You must complete a one page application form that asks for certain information, including the Federal Employer Identification Number (FEIN) for your business, and pay the required registration fee. Individuals must be in good standing with the TN Department of Revenue in order to receive an exemption.

Exemptions only apply to the individuals listed on the Secretary of State's registry. It is important to note that exemption holders are electing to exempt themselves from workers compensation coverage and will not be eligible for workers compensation benefits in the event of injury. Without the exemption, you will need to be covered on the workers compensation insurance policy for your business and will be required to pay the appropriate premium for coverage.

- ❖ The exemption does **NOT** apply when working on a **Commercial Construction Project**, as defined in Public Chapter 1149, unless you are named by the General Contractor as one of three (3) sub-contractors that are exempt on that particular Commercial Construction Project. A Commercial Construction Project is defined as any project that involves the construction, erection, remodeling, repair, improvement, alteration or demolition of any structure **EXCEPT** the following:
  - Any one (1) to four (4) family residence that does not exceed three (3) stories in height;
  - Any building or structure for use and occupancy by the general public that does not exceed \$750,000 in total cost;
  - Any project directly associated with the business of producing/providing electricity, natural gas, water, waste water services, telephone service, telecommunications service, cable service or internet service or any combination thereof; for sale to consumers in a particular area
- ❖ If you hold an exemption and you are listed by the General Contractor as one of the three (3) exempt sub-contractors on a Commercial Construction Project; you are exempt **ONLY** on that particular Commercial Construction Project.
- ❖ You are not required to have coverage or an exemption in limited circumstances, such as the following:

- You are a sole proprietor or partner engaged in the construction industry doing work directly for the owner of the property.
- You are the sole proprietor or partner doing construction work on your own property for your own use for which you receive no compensation.
- You are a “casual” employee at the time of injury as provided in statute 50-6-106.

### **Premium Determination – Front-End**

**(If additional premiums owed are over \$1,000, monthly installments will be made available for this billing.)**

The premium determination for your employees will NOT change as a result of PC 1149. For those individual sole proprietors, partners, LLC members and corporate officers that were previously exempt from coverage, it will now be necessary to estimate your premium at the beginning of the policy term and to adjust this estimated premium at the end of the policy term, based on the payroll audit results. Since PC 1149 becomes law on **March 1, 2011**, we will only require estimated premium amounts for insurance policies (currently in force) that are less than 6-months old as of March 1, 2011, and all policy renewals after that date.

In order to obtain this information from you, we have developed a form called the *Verification of Estimated Contractor Revenue Form* to assist us in estimating the additional premium that may be due as a result of this law change. You will be required to complete, sign and return this form in a timely manner. **FAILURE TO RETURN THIS COMPLETED FORM IN A TIMELY MANNER COULD RESULT IN SIGNIFICANT PREMIUM CHARGES.**

### **Premium Determination – Final Payroll Audit**

It will be extremely important for you to maintain financial business records, such as the following: signed contracts, permits, invoices, receipts, general ledger information, and a list of all jobs performed during the policy term, including names and addresses for each job, and your gross receipts. We will need this information in order to help us determine the percentage of **Commercial Construction Project** work versus the percentage of all other construction-related work, provided you have the exemption from the TN Secretary of State. For example, if it is determined that 25% of your revenue was derived from Commercial Construction Project work where you did not have an exemption from the GC; then we will use that percentage to determine your premium, as described below.

**In Tennessee, Limited Liability Companies (LLCs) are recognized by the Tennessee Department of Labor and Workforce Development as partnerships for workers' compensation insurance purposes.**

For the construction industry, premium determination for each partner and sole proprietor treated without an exemption under PC 1149 is based on the actual payroll amount (when qualifying tax forms are supplied), subject to the minimum and maximum payroll amounts for partners and sole proprietors in the Basic Manual. The minimum and maximum amounts are as follows:

- The minimum payroll for sole proprietors and partners is \$9,950;
- The maximum payroll for sole proprietors and partners is \$58,500.

These minimum and maximum payroll amounts include annual amounts of wages, salary, emoluments, or profits for each such partner or sole proprietors. IRS tax forms for sole proprietorships and partnerships may be used to determine the actual payroll amounts (**multiplied times the Commercial Construction Project percentage [%], where applicable**) as follows:

### **Sole Proprietorships – IRS Schedule C**

- If the net loss or net profit amount is less than the minimum payroll amount (\$9,950); then the minimum payroll amount applies.
- If the net profit amount falls between the minimum (\$9,950) and maximum (\$58,500) payroll amounts; then use the net profit amount.
- If the net profit amount is greater than the maximum payroll amount (\$58,500); then the maximum payroll amount applies.

**Partnership – IRS Form 1065 with Schedule K**

- If the net earnings (loss) from self-employment amount is less than the minimum payroll amount (\$9,950); then the minimum payroll amount applies.
- If the net earnings from self-employment amount falls between the minimum (\$9,950) and the maximum (\$58,500) payroll amounts; then use the net earnings from self-employment amount.
- If the net earnings from self-employment amount is greater than the maximum payroll amount (\$58,500); then the maximum payroll amount applies.

However, in both examples, if the IRS Schedule C (sole proprietors), or IRS Form 1065 with a Schedule K (partners) **is not provided to your insurance company representative at the time of final audit**; then the stipulation for Tennessee in the Basic Manual (filing in progress) is that the premium determination for each partner and sole proprietor will be based on the **maximum** payroll amount shown for the construction industry (\$58,500) **(multiplied times the Commercial Construction Project percentage [%], where applicable)**.

**Corporate Officers – Actual Payroll Information (subject to minimum/maximum)**

- If the actual payroll for a covered corporate officer is less than \$190 average per week (\$9,880/annually); your premium will be based on the minimum payroll of \$190 average per week.
- If the actual payroll for a covered corporate officer is greater than \$1,125 average per week (\$58,500/annually); your premium will be based on the maximum payroll of \$1,125 average per week.
- If the actual payroll is between the minimum or maximum; your premium will be based on the actual payroll.

**Example: Sole Proprietor**

Income from IRS Schedule C =	\$45,000
Gross Receipts (Total):	\$100,000
(Less) Verifiable Non-CCP receipts:	\$(50,000)
(Less) Exempt CCP:	\$(4,500)
Chargeable receipts	\$45,500

CCP Portion of gross receipts:  $45,500/100,000 = 0.455 = 45.5\%$   
 $\$45,000$  (IRS Schedule C)  $\times 0.455 = \$20,475$  (payroll)  
 $\$15$  (Class Code Rate)  $\times \$20,475/100 =$  **\$3,071 (additional premium)**

**If no IRS Tax Form:  $\$15.00 \times \$58,500/100 \times .455 = \$3,993$**

**Classification Code Exceptions**

Individual owners (sole proprietors, partners, LLC members, and corporate officers) that are eligible for exemption under Public Chapter 1149 (as described above) and are listed on the Secretary of State’s Exemption Registry, are exempt while working on Commercial Construction Projects, **IF** they are correctly classified in Classification Code 5604 or Classification Code 5606. In order to be correctly classified in either 5604 or 5606, you can NOT be engaged in ANY direct labor activities. Please contact your agent for further assistance in helping you determine if either of these classification codes applies to you. **STATUTORY “EMPLOYEES” THAT MAY BE CORRECTLY CLASSIFIED IN 5604 OR 5606 ARE NEVER EXEMPT.**

Please contact your agent to discuss the details of your specific circumstances and the effect this change may have on your policy, if you have questions.