



SEARCH



[HOME](#) | [MEMBERS ONLY](#) | [CONSUMERS](#) | [SITEMAP](#) | [WEBMAIL](#)



Your Tennessee Association



- Members Only**
- Profile
- Agency Mgt
- Public Entity Program
- Technical Info**

- Auto**
- Labor Forms
- Laws
- Other
- Workers Comp**

- WC Data
- Bonus Rule
- ERM-14
- Changes
- Ex Mods
- Comm Cancel
- WC Contacts
- Contractors
- Death
- Employer
- Employer WC
- Mod Factors
- Factors
- LLCs
- Max Min
- Balance
- Ownership
- Penalties
- Scope
- Proprietary
- Obligation
- WCNCCI
- WC Archive
- WC FAQs

- Member Publications**
- Volunteers**
- Log Out**
- About Us**
- Publications**
- Join Us**
- Products**
- Education**
- Convention**
- Government Affairs**
- Find A Member**
- Jobs**

## Q+A: FAQs on TN Workers' Compensation

**Q:** If an injured exempt CSP files with his health insurance for medical coverage, can he be denied coverage?

**A:** That would depend solely on the terms and conditions of his health insurance policy and the exemption registry has no bearing on this decision.

**Q:** How does the new law apply to contractors domiciled outside of TN?

**A:** It will apply to anyone doing construction work in Tennessee. So, a KY contractor doing work in TN will be required to either cover himself with comp or file for an exemption.

**Q:** How does a GC protect himself at audit time to avoid being charged for uninsured subs or employees of subs?

**A:** The only way for a GC to protect himself is to require that the exempt CSP have at least a minimum premium policy and maintain good records. The auditor should not charge for anyone on the Registry and the minimum premium policy would cover any "unknown" employees.

Barring that, the following rule would apply:

State Exception to Rule 2 -- Premium Basis and Payroll Allocation

### H. SUBCONTRACTORS

Change Rule 2-H Subcontractor Tables 1 and 2 as follows:

**Subcontractor Table 1**

If the contractor has not furnished evidence of workers compensation insurance and . . .	Then to calculate the additional premium . . .
Furnishes complete payroll records of the subcontractor's employees . . .	Use the payroll detailed in the records. For purposes of this rule, the following documents are examples of types of acceptable payroll records: <ul style="list-style-type: none"> <li>• payroll ledgers</li> <li>• quarterly payroll tax returns</li> <li>• time sheets</li> <li>• draw sheets</li> <li>• cash disbursement records</li> </ul>
Does not furnish complete payroll records and the subcontract price does not reflect a definite payroll amount . . .	Use the full subcontract price of the work performed during the policy period by the subcontractor as payroll
Does not furnish complete payroll records, but	

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documentation of a specific job discloses that a definite amount of the subcontract price represents payroll . . .	Use the payroll amount indicated by the documentation as the payroll, subject to the minimums in Subcontractor Table 2 below
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**Subcontractor Table 2**

<b>If the job involves:</b>	<b>Then the minimum to calculate additional premium is:</b>
Labor and material	Not less than 50% of the subcontract price
Labor only	Not less than 90% of the subcontract price
Piecework	Not less than 100% (The entire amount paid to pieceworkers must be the payroll.)

Q: How will contractors be notified of the new law and the registration procedures?

A: The state is not under an obligation to notify anyone of law changes. The TWCIP will be sending out information about the new law to all policyholders with construction classifications. Regarding registration, it appears that the SOS website will be very user friendly, and the filing instruction sheet and is very detailed.

Q: How many languages will this be available in online? Will the SOS have translators available at their office when people come to get signed up?

A: English only.

Q: Should we recommend that a non-commercial subcontractor with no employees register with the Secretary of State?

A: It depends upon whether your non-commercial subcontractor wants to purchase a policy on himself or not. If he does not want to purchase workers' compensation insurance on himself, then he would be required to register with the Secretary of State and be listed on the Exemption Registry.

Q: If an exempt CSP is injured on a job, can he sue the GC under a negligence theory?

A: Yes. The injured CSP will be allowed to file suit under negligence or any other theory, other than workers' compensation. If the exempt CSP had a policy of comp on his employees, but not covering himself, that policy would not provide any third party relief or recovery to the General because the exempt CSP was not insured under that policy. (Logically, policies only provide recovery for those insured.)

Another example could be: If the GC has employees covered on his own WC policy, and an exempt CSP on the job as well injured one of the GC's employees, the GC's WC carrier could subrogate back against the exempt CSP for payments made on behalf of the injured employee.

Q: GL will not respond to WC related injuries; correct?

A: You are correct. However, if the injured person is not an employee and exempt from comp, the injured person may file a negligence action against the GC. At that time, the GC may seek defense and liability coverage from his CGL. Attached is the article regarding CGL that was in the July Edition of the Insuror magazine. The law specifically provides that an injured exempt CSP may seek common law damages.

Q: Does the CSP using some leased workers cause any issues you are aware of?

A: A leased worker would be considered an employee during the time he was working for the CSP, so the CSP, exempt or otherwise, would be required to cover the leased workers through a WC policy.

Q: If you file a revocation form because you are not 1 of the 3 CSPs on a job is there a way to file for the exemption after the job is completed and is there another fee to get this exemption?

A: An exempt CSP will remain on the exemption registry during the two year period regardless

of the type of job he is on, and regardless of whether he is one of the first three on a commercial job or not. If he is the 4th person on a commercial job, his exemption status is not Revoked (because this has a very specific meaning). The 4th man merely is not eligible to claim the exemption for the time he is on the commercial job and must be covered by a WC policy while on that job.

Revocation is a specific term used when the ECSP chooses to not be on the registry or if forcefully removed by the SOS.

Q: Is there a list of cities and counties that require a business license?

A: Yes, you may view it here:

[http://www.insurors.org/Content/NavigationMenu/PDF6/BT-Cities\\_Counties-8262010.XLS](http://www.insurors.org/Content/NavigationMenu/PDF6/BT-Cities_Counties-8262010.XLS)

Q: Does a Sole Proprietor need a WC policy in order to be eligible for registration on the Exemption Registry?

A: No. In order to file to be on the Exemption Registry, a Sole Proprietor need only to have the required information we went over on the Application, such as an FEIN and business license.

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