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# The True Cost of Independent Contractors

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**by Charles H. Cox**

Whether your company is considering the use of a handyman for some odd jobs around the premises or a large company contracting with a building contractor to construct a new facility, there are certain steps that need to be taken to properly transfer the risk of loss. Sometimes companies will seek out individuals rather than contract with large firms to perform certain tasks in an effort to save money. Transferring risks of loss to individuals, however, is considerably more difficult and, consequently, such transfers are seldom accomplished. This can cost your organization more money in the long run than it saved up front.

Let's presume that you hire an individual to perform various tasks such as landscape work and snow removal. Further presume that the individual uses his own tools and equipment, controls his own hours, is paid by the job and does not receive a W-2. As such, you consider him to be an independent contractor. Since the handyman is an individual, unless he hires someone to work for him, he likely will not be required to maintain workers' compensation insurance. Although some states make workers' compensation coverage available to individuals, many consider it too expensive or unnecessary, so requiring it is frequently impractical.

It is important to understand that if the handyman has no workers' compensation insurance, the money paid to that handyman can be treated by your workers' compensation insurer as payroll and applied to the appropriate payroll classification(s) and rate(s). Workers' compensation auditors regularly look at 1099s to see what has been paid to others. In the absence of a certificate of insurance on file that evidences workers' compensation coverage for firms or individuals who performed services for you for which you filed a 1099, the cost of the service can be treated as payroll, as though the individual or firm was an employee.

In addition, despite your position that such individuals are independent contractors and not employees, if they are injured while working for you and they have no workers' compensation coverage, it is likely they will seek workers' compensation benefits from you (and such benefits would then be available under your workers' compensation coverage, presuming the employment status was held to be valid by the Workers' Compensation Board).

Alternatively, if the injury were considered to be the result of your negligence, the inependent contractor, in the absence of a hold harmless provision in your favor (strongly recommended but not likely used for individuals) would likely bring an action against you. Coverage for such actions would most likely be afforded under your general liability insurance.

So you saved some money up front, but the cost of your workers' compensation insurance can increase as a result of the unexpected inclusion of contract cost as payroll. In addition, worsened loss experience resulting from an injury to the individual will have an adverse impact on experience or loss rated workers' compensation or general liability insurance. Of course, the same results can occur when contracting with a large firm, if that firm fails to maintain workers' compensation coverage or if you fail to obtain evidence of its coverage by means of a certificate of insurance.

Another consideration when using independent contractors (individuals or otherwise) is the exposure to loss resulting from liability to third parties arising out of their work. While likely covered by your own general liability insurance program, claims resulting from independent contractors can impact

your liability insurance costs. It is appropriate, therefore, to have independent contractors maintain their own liability insurance naming your organization as an additional insured in an effort to keep such claims from being paid under your insurance.

The size of the contractor and the activity involved have little to do with the potential for causing bodily injury or property damage. Selecting the appropriate level of liability insurance to be maintained by the independent contractor will depend largely on the type of work being performed. Problems are frequently encountered when obtaining evidence of reasonable levels of liability insurance from individuals or small firms, but having evidence of such coverage from them is just as important.

This article was previously published in Risk & Insurance magazine. Charles H. Cox is president of Aldrich & Cox, Inc., an independent risk management and employee benefit consulting firm based in Buffalo, N.Y.

Independent Contractors in the Ice Arena

The "handyman" is only one example of an independent contractor. Independent contractor relationships are common in ice arenas - many figure skating and hockey coaches, referees, off-ice dance instructors and off-ice officials work as independent contractors. The same issues outlined above apply to these individuals, as well as to volunteers who provide services in an ice arena.