

Tips for Avoiding Stop-Work Orders

Here's what employers – and lawyers – need to know.

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Florida Statutes Chapter 440 grants authority to the Department of Financial Services, Division of Workers' Compensation, to enforce the workers' compensation laws in the state of Florida.

This typically involves random job site inspections by the DWC's auditors, who have the ability to interview everyone on-site regarding their employment and workers' compensation coverage status, issue a Stop Work Order on one or all of an employer's job sites until proof of coverage is obtained, and issue business records requests.

The DWC uses the business records to audit the employer's workers' compensation compliance not only on the date of the site inspection, but also during a two-year look back period.

If noncompliance is found at any point during the audit period, the DWC can issue penalties and impute wages for an employer's failure to respond to business records requests.

However, financial penalties are not an employer's only concern, as enforcement actions can carry criminal implications. If an employer is deemed noncompliant for a second time within a five-year period, the employer is subject to third-degree felony charges for insurance fraud per Chapter 440.

Between the possibility of a hefty penalty assessment and potential criminal charges, there is a lot at stake for Florida's employers.

Stop Work Orders, business record audits and penalty assessments can be a costly and confusing headache for employers and their attorneys seeking to maintain compliance with the Florida workers' compensation laws. Here are five tips for avoiding them:

1. Employers should be honest with their insurance agents/brokers when obtaining or renewing their workers' compensation policy.

Workers' compensation coverage can be costly, and this often is an area where employers attempt to cut costs. However, that can result in more expensive problems down the road and poses other risks and exposure to the employer.

The agent/broker should know the type of work the employees perform, amount of payroll wages and the nature of the business. Communicate frequently with agents/brokers for ongoing compliance as business needs change.

2. Ensure subcontractors or independent contractors have workers' compensation coverage or exemptions in place.

Employers should inform their agent/ broker if they use subcontractors or independent

contractors and whether their policy covers, or should cover, them.

An employer will be penalized during a DWC compliance audit for wages paid to subcontractors without proper coverage or an exemption in place. Maintain up-to-date subcontractor and independent contractor agreements that include specific terms regarding which party is responsible for maintaining workers' compensation coverage for each entity and its employees.

A construction employer can be held responsible for work injuries sustained by a subcontractor and/or its employees that are uninsured for the purposes of workers' compensation.

3. Do not misclassify employees. During an audit, the DWC will assess a \$5,000 penalty per employee misclassified as a subcontractor or independent contractor.

Misclassifying employees exposes employers to other potential liabilities and penalties. Employers will be required to provide workers' compensation benefits to injured workers misclassified as subcontractors or independent contractors.

4. Do not commingle business and personal assets, or assets from different businesses. During an audit and penalty assessment, penalties will be calculated using the highest-class code of all the businesses involved.

This results in significantly higher penalties for the business that would have been assigned a lower-class code if the funds were separate and distinguishable for each entity.

The employer has the burden to prove disbursements from the business bank account were paid to individuals/entities with proper workers' compensation coverage or valid exemptions in place.

The commingling of personal and business assets is common in small businesses, but these should be kept separate. Discrepancies in the employer's business records will be construed against the employer. The statute allows DWC compliance auditors to impute unexplained disbursements as wages and assess penalties accordingly.

5. Keep a detailed general ledger and an organized system for all business records. Do not use cash.

This can be hard for busy business owners. However, the statute requires employers to maintain complete records. Stop Work Orders and compliance audits always involve a business records request that can go back two years. If an employer does not have any records, or complete records, the DWC will impute wages, which are typically higher than actual wages.

All unexplained disbursements (including cash withdrawals) from an employer's business account lacking supporting records will be considered uninsured wages for the purposes of the penalty assessment.



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