

## Frequently Asked Questions Regarding Workers' Compensation Audits

Workers' compensation policies are issued with estimated payroll figures for the policy period. An audit is completed at the end of the policy period in order to determine the final policy premium. Here are answers to some of the frequently asked questions you may have as you complete the audit process.

### **1. We do not pay our pastor a salary, but provide him with an offering each month. Do we still need to list him as an employee?**

Many religious organizations pay their clergy as independent contractors and not as employees. While this may be acceptable for tax purposes, workers' compensation laws are concerned with the employee/employer relationship and not how the person is paid.

Typically, clergy are not considered independent contractors for the following reasons.

- They are in the same line of business as the employer.
- Their job function is a regular part of the business of the employer.
- The employer provides most of the tools and facilities used to accomplish the work such as a house of worship, hymnals, parsonage, etc.
- The duration of the employment is usually long term.
- The employment is usually continuous over the period of time.
- They usually work with one organization exclusively and rely on it as their sole source of income.

It is not necessary to meet all of these conditions to be classified as an employee.

### **2. What should and should not be included in the definition of salary?**

**Payroll should include the following items:**

- Wages or salaries including retroactive wages or salaries.
- Total cash received by employees for commissions and draws against commissions.
- Bonuses including stock bonus plans.
- Extra pay for overtime work.
- Pay for holidays, vacations or periods of sickness.
- Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans such as the Federal Social Security Act.
- Payment to employees on any basis other than time worked such as piece work, profit-sharing or incentive plans.

- Payment or allowance for hand tools or power tools used by hand provided by employees either directly or through a third party and used in their work or operations for the insured.
- The rental value of an apartment or house provided for an employee based on comparable accommodations along with utilities paid by the insured on behalf of the employee.
- Car allowance.
- The value of lodging other than an apartment or house received by employees as part of their pay to the extent shown on the insured's records.
- The value of meals received by employees as part of their pay to the extent shown on the insured's record.
- The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay.
- Payment for salary reduction, employee savings plans, retirement, or cafeteria plans, which are made through employee-authorized deductions from the employee's gross pay.
- Davis-Bacon wages or wages from a similar prevailing wage law.
- Annuity plans.
- Expense reimbursements to employees to the extent that an employer's records do not substantiate that the expense was incurred as a valid business expense.
- Payment for filming of commercials, excluding subsequent residuals, which are earned by the commercial's participants each time the commercial appears in print or is broadcast.

**Payroll should not include:**

- Tips and gratuities received by employees.
- Payments by an employer to group insurance or group pension plans for employees. Unless a special fund is set up for an employee, such as the purchase of retirement property and it is an exclusive plan for that employee, then the special fund is considered payroll.
- The value of special rewards for individual invention or discovery.
- Dismissal or severance payments except for time worked or accrued vacation.
- Payments for active military duty.
- Employee discounts on goods purchased from the employee's employer.
- Expense reimbursements to employees to the extent that an employer's records substantiate that the expense was incurred as a valid business expense.
- Dinner money for late work.
- Work uniform allowances.
- Sick pay paid to an employee by a third party, such as an insured's group insurance carrier, which is paying disability income benefits to a disabled employee.
- Employer provided prerequisites such as use of an automobile, airplane flight, incentive vacation, discounts on property or services, club memberships, or tickets to entertainment events.
- Employer contributions to salary reduction, employee savings plans, retirement, or cafeteria plans.

Once again, be sure to check with your state workers' compensation laws for any exceptions to these rules.

**3. How do we calculate overtime payroll for inclusion in the workers' compensation audit?**

Overtime means those hours worked for which there is an increase in the rate of pay:

- For work in any day or in any week in excess of the number of hours normally worked.
- For hours worked in excess of eight hours in any day or 40 hours in any week.
- For work on Saturdays, Sundays, or holidays.

**4. Our church hires sub-contractors from time to time. Can we be held liable for this exposure under our policy and what can we do to protect ourselves?**

If the insured hires sub-contractors during the policy period, under the laws of many states, they could be held liable for this exposure under their policy. There are a couple of things you can do in order to avoid this exposure.

- Hire a general contractor that carries workers' compensation insurance.
- Require the sub-contractor to provide you with proof of workers' compensation coverage.

If you are hiring sub-contractors, and they fail to provide you with proof of workers' compensation coverage, an additional premium shall be charged on the policy for each sub-contractor for which such proof is not furnished.