

Policyholder Notice*

It has come to the attention of the Tennessee Bureau of Workers' Compensation and the Tennessee Department of Commerce and Insurance that there is some confusion regarding exemptions for workers' compensation policies on commercial construction projects.

Since 2011, Tennessee law has stated that on a commercial construction project a maximum of three (3) Construction Service Providers' (CSP's) may be exempt for the duration of the project. This means that only three total individuals may be exempt, which would include any of the General Contractor's exempted CSP's.

Effective January 1, 2021, the ***Basic Manual for Workers' Compensation and Employers Liability Insurance*** is being amended to clarify the proper rating basis for the coverage being afforded. The statutory basis for the proper rating has not changed.

Therefore, even if a CSP has a valid exemption on the registry, that CSP's exposure on "commercial construction projects" as defined in Tenn. Code Ann. § 50-6-901(3), is chargeable on that CSP's own policy unless the general contractor designates the individual CSP as one of up to three (3) construction service providers performing "direct labor", as defined in Tenn. Code Ann. § 50-6-901(7) and per the requirements of Tenn. Code Ann. § 50-6-914(b)(2)(A-C). In instances where the exempt CSP performs both residential and commercial work, the allocation of chargeable payroll between nonexempt commercial construction projects and all other construction projects will be determined by the formula found in the ***Basic Manual for Workers' Compensation and Employers Liability Insurance*** Rule 2-E-1-b or Rule 2-E-3, as applicable.

Classifications 5604 and 5606 are not considered direct laborers and therefore are exempt on a commercial construction project, if they maintain a valid exemption on the exemption registry.

In order for the three (3) individuals on the commercial construction project to qualify for the exemption, the General Contractor must:

- (i) Notify each CSP in writing that the CSP has been "selected" as one of the three (3) exempt CSP's; and
- (ii) Maintain a list identifying each exempt CSP which must be produced at audit or upon request by the state.

* This notice was developed for the Department's use by insurance industry representatives.