

## The Risks and Rewards of Subcontractor, Vendor and Supplier Contracts

Many contractors hire subcontractors to perform specific tasks or vendors and suppliers to provide materials on jobs for which the contractor has been hired. We are going to explore, how contractors in Illinois can protect themselves from liability associated with the acts of these subcontractors and vendors or suppliers.

The first step in transferring risk is the creation of a contract. Illinois doesn't allow contractors to contractually transfer their own liabilities to other persons/entities. However, Illinois does allow contractors to contractually require other persons/entities to purchase or carry insurance that will protect the contractors' interests. Therefore, it is important that XYZ Construction, for example, has a contract which requires each subcontractor, vendor or supplier to provide the types and limits of coverage XYZ Construction deems appropriate to properly protect their interests. Commonly, you will see requirements for Workers' Compensation, Employers Liability, General Liability, and Umbrella insurance coverages. Where appropriate, Auto Liability, Pollution and Professional coverage might also be required. Limits can be required based on trade and exposures or can be comprehensively required for all persons and entities involved in the construction job.

In addition to requiring specific coverages and limits, contracts should require waivers of subrogation, primary/noncontributory language, and additional insured status on appropriate policies. There are generally three categories of additional insured status and XYZ Construction needs to determine and specify in the contract what level of additional insured protection it requires. Currently, most additional insured endorsements require that there be a written contract in place. This requires the extension of additional insured status. Without such a contract in place, additional insured status will not be conveyed onto XYZ Construction.

Once the contract is in place, the next step is to require each subcontractor, vendor or supplier to provide evidence of insurance and review the evidence to validate the coverage provided matches the requirements of the signed contract. Best practices mandate that the endorsement providing the additional insured status be submitted along with the certificate of insurance evidencing the coverages and limits. One of the most important portions of the review is to confirm that the contractually required parties have been properly named as additional insured on the subcontractor's, vendor's or supplier's policies and that the additional insured status mirrors the contract.

Most contractors, such as XYZ Construction, don't consider this process to be a priority until it's too late. In such cases, and assuming the contractor's own policies provide the necessary coverage, the contractor can rely on their own insurance carrier to protect their interests. However, this impacts the contractor's loss experience and defeats the purpose of contractual risk transfer.

If XYZ Construction doesn't have the internal time or expertise to validate whether the coverages provided meet contractual requirements, they can choose to outsource this process. Various companies, like Assurance, offer services to review the certificates to make sure they meet contractual requirements, check A.M. Best ratings of each certificate's insurance carrier or even interrupt the additional insured endorsement to verify the additional insured status meets the expected level of protection. Talk to your insurance advisor to find out more and to determine if outsourcing your risk transference process makes sense for your business.



# Cost Containment Tool: Dependent Eligibility Audit

Reducing overall costs is a top priority in almost every organization and employee healthcare costs are a main focus. With no end in sight to rising healthcare costs and practically every option to curb healthcare spending exhausted, what can employers do? The answer may lie in something as simple as making sure the people you have covered under your health plan are actually eligible for coverage. A dependent eligibility audit may be an option.

Dependent eligibility audits are used to identify ineligible dependents that are enrolled in your benefit plans. Examples include children that have met maximum age or student status, divorced spouses, or children impacted by changes in custody arrangements. Estimates show that 3 to 12 percent of covered dependents are not actually eligible. This can translate into significant cost savings for employers.

When planning an audit, an employer should consider the following:

- Are all plan documents consistent in defining dependents?
- What will the scope of the audit be and who will perform it?
- What documents will satisfy proof of eligibility for various types of dependents?
- What will be the message communicated to employees?
- How will employees perceive an audit? Are there other employee relations issues going on?
- How will privacy issues be addressed?

One of the most essential aspects of a dependent eligibility audit is employee communication. Employees should be told in advance of the coming audit so they can gather the proper documentation. Also, they should be reminded frequently throughout the audit period to ensure the best possible participation rate. Use already established mediums for communicating the message, including your company intranet, e-mails, bulletin board postings, payroll stuffers, etc.

Typically there are two steps to a dependent eligibility audit.

**Step One:** Employers establish a period of amnesty where employees can voluntarily remove ineligible dependents. Employees are notified by letter, explaining eligibility rules. An employee can then review all covered dependents for status, and no penalty will apply to those dependents removed because they no

longer qualify. Employers generally give employees one month to respond. Ineligible dependents are terminated at the end of the following month.

**Step Two:** For all remaining dependents after the initial amnesty period, employers should require employees to provide documentation to verify dependent status/relationship. Documents must establish both a dependent relationship and that the relationship still exists. Examples may include:

- Marriage certificate
- Domestic partner affidavit
- Legal documents that establish custody, guardianship or foster care
- Birth certificate
- Tax status form
- Medical documentation of disability
- Adoption papers

If an employee is unable to establish a dependent relationship, employer may impose penalties or seek reimbursement for claims paid for ineligible dependents among other solutions.

Many companies find that hiring an independent audit firm may be desirable as the auditing process can be cumbersome and time-consuming. While an audit of this nature may seem extreme, so is unknowingly paying for healthcare services for people who are not eligible. A dependent eligibility audit provides compelling evidence and helps to preserve the integrity of your corporate benefits package.

For more information on dependent eligibility audits, contact your employee benefits advisor.



At Assurance, we have built our reputation on earning our client's trust and confidence through excellence in every interaction. Independent since our inception in 1961, Assurance is ranked by *Business Insurance* magazine as the 66th largest broker of U.S. business.

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