



Colorado Roofing Association – Working with Subcontractors

10.18.2023

PINNACOL
WORKERS' COMP INSURANCE



How to determine if a subcontractor has Work Comp insurance coverage

Collect a Certificate of Insurance (COI)

~Best practice: Obtain the COI directly from your Agent or Insurance Company

******A few items to look for to ensure the certificate of insurance is valid

- Cert was issued within a few days of your request
- Name of the Insured is the Sub you are paying
- Certificate shows a policy number for a work comp policy and not a notation such as *applied for*
- You are listed as the certificate holder
- Check the dates of the policy to be sure they cover the time the Sub is working for you
- Request that the Sub's carrier notify you of cancellation

The Colorado Department of Labor & Employment has a verification of coverage tool that shows coverage on any given day.

<https://www.ewccv.com/cvs/search?ref=https://www.Colorado.gov/pacific/cdle/node/20371>

The screenshot shows the 'Colorado Department Of Labor & Employment - Division Of Workers Compensation' website. The page has a blue header with the 'WC COVERAGE VERIFICATION' logo. Below the header, there are three tabs: 'Employer', 'FEIN', and 'Address'. The 'Employer' tab is selected. The form contains the following fields and options:

- State ***: A dropdown menu with 'Colorado' selected.
- Coverage Date ***: A date input field with '10/12/2023' and a calendar icon.
- Employer Name ***: A text input field.
- Search Options**: Two radio buttons, 'Contains' (selected) and 'Starts With'.
- Buttons**: 'SEARCH' and 'CLEAR' buttons.

- The Dept of Labor site is available to everyone. You don't have to be a Policyholder to access it.
- The site can be temperamental with business name spelling; so be sure you have the correct business name.
- There is an optional tracking tool available on the site to follow specific policies and notify you any time there are coverage changes.

How often should you check to make sure coverage is in effect?

- Check for an active Work Comp policy monthly.
- It's a good idea to ask your Sub for their Work Comp policy **effective date** so you can set up a reminder to verify that their coverage renewed.
- *Alternative Option:* There are third-party services you can hire that do the COI verification for you.

What happens if an employee of a subcontractor is injured, and the subcontractor has no coverage in effect?

Responsibility flows up until a statutory employer with work comp is found.

**Statutory employers are individuals or businesses that employ another individual to perform work and, by law, become actual employers who are liable for workers' compensation. These employers are liable to any individual who gets injured while performing their work or duties.

It is very important to protect your business when you use subcontractors by ensuring that they are in compliance with the Colorado Workers Compensation Act. There are consequences to your policy and business if a Sub you hired does not have coverage and there is a claim(s).

- Not only could you be liable for the subs Work Comp claims, but also their missing worker's comp insurance.
- Could affect your emod and work comp premium
- Could affect your ability to attract future contracts
- Could result in an unexpected large audit addition

***We have customers who require everything up front and even put in contract language stating they won't pay their Sub until a COI is received and verified.*

How high can an injured worker go until he/she finds workers comp coverage to pay for his/her medical expenses?

- **There is no limit. It can go as high as needed to find the statutory employer.**
- The Sub should have a work comp policy or qualify as Independent Contractor.
- To be considered an independent contractor, per the Colorado Workers' Compensation Act, the individual must be engaged in an independent trade, occupation or service; must be free from control; and have no workers.
- Each situation is unique, and independent contractor status can vary.

Who's INCLUDED on your workers' compensation policy?

WORKER

- Paid by payroll
- Receives W-2

WORKER

- Paid by cash
- Receives nothing or 1099

WORKER

- Paid by check not payroll
- Receives nothing or 1099

Who may be EXCLUDED from your workers' compensation policy?

SUBCONTRACTOR

- Has workers on the job and MUST have a workers' compensation policy

If the subcontractor doesn't have a workers' compensation policy, his employees will be included on your workers' compensation policy.

INDEPENDENT CONTRACTOR

- Has his/her own business
- Works alone
- Has no employees/workers
- Business name
- Business insurance
- Tools
- Gives you a bill for services
- Is free of your direction and control
- You don't supervise the independent contractor

If the individual does not meet the above criteria or has employees, the individual will be included on your policy.



¿Quién está **INCLUIDO** en su póliza de seguro de compensación de trabajadores?

TRABAJADOR

- Se le paga por nómina
- Recibe el formulario W-2

TRABAJADOR

- Se le paga en efectivo
- Recibe nada o un formulario 1099

TRABAJADOR

- Se le paga con cheque y no por nómina
- Recibe nada o un formulario 1099

¿Quién puede ser **EXCLUIDO** en su póliza de seguro de compensación de trabajadores?

SUBCONTRACTOR

- Tiene trabajadores en la obra y DEBE tener una póliza de seguro de compensación de trabajadores.

Si el subcontratista no tiene un póliza de compensación de trabajadores, los trabajadores del subcontratista serán incluido en su póliza de compensación de trabajadores.

SUBCONTRATISTA

- Tiene su propia empresa
- Trabaja solo
- No tiene empleados ni trabajadores
- Tiene nombre comercial
- Tiene seguro comercial
- Herramientas
- Expide una factura por los servicios prestados
- No está bajo la dirección y control de usted
- Usted no supervisa al contratista

Si el individuo no cumple con el criterio previamente citado o tiene trabajadores, el individuo será incluido en su póliza.

Questions



Subcontractor Insurance Compliance Form

Subcontractor: _____

Project: _____

Complete/Check appropriate boxes:

	Yes	No	N/A
Commercial General Liability Insurance (CGL)			
I. Is the CGL written on an Occurrence Form			
II. Does the CGL provide coverage for:			
a. Premises or On-Going Operations			
b. Products / Completed Operations			
i. Maintained through the longer of the statute of limitations or repose period for construction defect & product liability claims in the state where the work is performed			
c. General Aggregate limit that applies on a "Per Project" basis			
d. Independent contractors or subcontractors' operations			
e. Blanket Contractual Liability			
f. Broad form Property Damage			
g. Personal & Advertising Injury			
III. Are any of the following restrictive endorsements on this Sub's CGL policy?			
a. Buildings and Structures Exceeding Three Stories Exclusion?			
b. Course of Roofing Operations Exclusion?			
c. Damage to Work Performed by Subcontractor Exclusion?			
d. Fall from Heights Exclusion?			
e. Heating Devices Exclusion?			
f. Hired Person Exclusion?			
g. Historic Buildings and Museums Exclusion?			
h. Hospital or Medical Facility Exclusion?			
i. Independent Contractors Exclusion?			
j. Mold or Indoor Air Quality Exclusion?			
k. Multi-unit Residential Structures Exclusion?			
l. Open Structure "Water Damage" Exclusion?			
m. Products completed operations exclusion for bodily injury?			
n. Products/Completed Operations coverage terminated at the end of the policy period or limited in any other way exclusion?			
o. Residential or Multi-Family Exclusion?			
p. Residential Size Restriction Exclusion?			
q. School or Recreational Facility Exclusion?			
r. Tract Home Project exclusion?			

Mandatory Endorsements and Other Provisions	Yes	No	N/A
a. Contractor and Owner named as "Additional Insureds" as required by written contract for ongoing operations			
i. On-Going Operations endorsement (CG2010 or equivalent)			
b. Contractor and Owner named as "Additional Insureds" as required by written contract for completed operations			
ii. Products / Completed Operations endorsement (CG2037 or equivalent)			
c. Is a copy of the additional insured endorsements naming the Indemnitees as Additional Insured for ongoing operations and completed on the CGL attached?			
d. Is the Additional Insured Coverage primary and non-contributory as required?			
e. Does the CGL contain a Waiver of Subrogation against Contractor and Owner ?			
f. Is 30-day notice of cancellation provided			
g. Do insurers have an A. M. Best Rating of A- VII or better?			

It is understood that the Contractor has requested this form to be completed to assist with ensuring Subcontractor's compliance with the insurance specifications contained in the Subcontract Agreement.

I certify that I am an authorized agent or representative of each of the insurance companies providing insurance for the Subcontractor, and I have the authority on behalf of each such insurer to execute this form.

If agent is unwilling to complete this compliance form, please send a full copy of all current insurance policies for review.

Signed: _____

Date: _____

Print Name and Title: _____

Firm Name: _____

Telephone/email: _____



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LEGAL CONSIDERATIONS WHEN WORKING WITH SUBCONTRACTORS

Developed by: DonAberbook, President, Commercial Lines/General Counsel

Points to emphasize

1. Colorado – limited indemnity per anti-indemnity statute, can only be responsible to the extent of negligence, AI provision should follow suit in that such protection is available to indemnitees to the extent of the negligence of the underlying insured.
2. Watch for indemnification and AI provisions in contract – should exclude Architects, Other Consultants, Other entities as required by Prime Contract (unless you are able to review that agreement to then determine who you are being asked to indemnify. **Moody available to provide full legal review, including such key provisions for clients and prospects.**
3. Do not agree to indemnify for consequential or punitive damages
4. Liquidated damages – if assessed, recommend a maximum amount per day, such as \$250-\$500, and must be directly tied to actual delays caused by the sub.
5. Limited Liability – Contract will often include a provision whereby consequential damages, punitive damages, and other indirect damages are waived as to Contractor. Make sure this is changed to be a mutual waiver, so that sub is not exposed to such damages, which likely will not be covered by insurance.
6. If hiring lower-tier subs, make sure to pass along all risk being passed onto you, **again Moody available to review for clients and prospects.**

Contractual/Insurance Risk Transfer

Owners

- Prefer to transfer all risk
- Should have own Liability insurance
 - OIP
 - Project Specific
 - Wrap

Builders Risk – who is taking the policy out

- Important considerations – additional insureds, waivers of subrogation

General Contractors

- Prime target
- Vicariously liable
- Transfer risk to subs

Pre-qualification critical

Why only obtaining COI's is not sufficient

Relationships

Subcontractors

- Responsible for actual construction
- Check to see if obligations follow prime contract
- Indemnity requirements – consistent with additional insured requirements?
- Adequacy of insurance may vary – issues with lower-tier subs

Differing indemnification types – broad, intermediate, limited – anti-indemnity statutes

GL typical insurance requirements – Contractual language is critical

- Ongoing, Completed operations
- Primary/non-contributory
- Waiver of subrogation

GL Additional insureds

Blanket – back to contract language

Specific endorsement

Additional insureds should be primary

Distinguish contractual indemnity obligation

Workers Compensation

Sub's carriers – reputable?

Statutory employer issues

Potential discrimination/retaliation claims – EPLI coverage?

Trends in multi-family construction – Colorado, other western states

Condo projects starting to come back

Wraps – which carriers write?

Slow changes in construction defect litigation



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PREQUALIFYING SUBCONTRACTORS

Developed by: Javier Rivera, CRM



THE INSURANCE ACADEMY

PROCOCORE[®]

The Avetta logo, consisting of a stylized green and orange mountain range icon followed by the word 'Avetta'.The ApprUV logo, featuring a stylized blue and grey geometric icon followed by the word 'ApprUV' with a trademark symbol.

ORACLE

The IPEC PREMIER logo, featuring the word 'IPEC' in a large, bold, blue font with a stylized blue and white graphic element, and the word 'PREMIER' in a smaller, spaced-out blue font below it.

What is Prequalification

Prequalification is to qualify a contractor to ensure financial strength, safety performance, and minimum insurance requirements.



**We prequalify to
limit the risk of a
project.**

Insurance Requirements

	Insurance Coverage Requirements				
	Vendor/ Suppliers/ General	Consultants/ Professional Services	Special Events/ Permits	Contractors Tier 1	Contractors Tier 2
Commercial General Liability	\$1 Million Occurrence/ \$2 Million Aggregate	\$1 Million Occurrence/ \$2 Million Aggregate	\$1 Million Occurrence	\$1 Million Occurrence/ \$2 Million Aggregate	\$1 Million Occurrence/ \$2 Million Aggregate
Business Auto	\$1 Million Combine Single Limit	\$1 Million Combined Single Limit	Not Applicable	\$1 Million Combine Single Limit	\$1 Million Combine Single Limit
Workers' Compensation	Statutory	Statutory	Not Applicable	\$1 Million	Statutory
Umbrella	Only to satisfy underlying coverage's compliance with required minimum limits	Only to satisfy underlying coverage's compliance with required minimum limits	Not Applicable	\$5 Million	Only to satisfy underlying coverage's compliance with required minimum limits
Professional Liability	Not Applicable	\$1 Million Per Claim Made/ \$2 Million Aggregate	Not Applicable	Not Applicable	Not Applicable
Liquor Liability	Not Applicable	Not Applicable	\$1 Million Occurrence	Not Applicable	Not Applicable
Pollution Liability	Not Applicable	Not Applicable	Not Applicable	\$1 Million Occurrence/ \$2 Million Aggregate	\$1 Million Occurrence/ \$2 Million Aggregate
Aviation/ Hangar Keeper's Liability	\$2 Million Occurrence/ \$4 Million Aggregate	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Aircraft Liability	\$1 Million Combined Single Limit	Not Applicable	Not Applicable	Not Applicable	Not Applicable

What coverages are required?

- Workers' Comp
- General Liability
- Umbrella (additional coverage over liability lines)
- Other Coverages
 - Auto Liability
Covers damage to our company vehicles, employee injuries arising from a vehicle accident and all 3rd party damages up to limits of the policy.
 - Pollution Liability Insurance
Covers damage to the environment caused by spills, or chemicals released into the environment.

Coverage	REQUIRED Extension of Coverage	Acceptable Reasons for Evidence of Coverage Exemption
Commercial General Liability	City is named as an Additional Insured AND coverage is Primary & Non-Contributory	None- HR/ Risk Management Director or City Attorney Approval Required for Exemption
Business Auto	City is named as an Additional Insured	All work is done at Certificate Provider's establishment, and there is no travel to the City or other sites
Workers' Compensation	Waiver of Subrogation- Only Required for Contractors & Consultants/ Professional Services	Contractor/ consult has no employees
Professional Liability	None	Only required for select consultants based on their profession. Examples are architects, engineers, auditors, attorneys
Liquor Liability	City is named as an Additional Insured	Only for individuals or groups using City facilities and serving alcohol
Pollution	None	Only for Projects with Demolition or Excavation activities
Aviation/ Hangar Keeper's Liability	City is named as an Additional Insured	Only when airplane hangars are rented from the City
Aircraft	None	Only from individuals that are using tie-down at the Redlands Airport, including Hot Air Balloons

Key Performance Indicators for Safety

- Emod – Experience modification rating
- TRIR – Total Recordable Incident Rate (OSHA)
- Training Compliance (% of employees trained in each of the key topics)
- Safety Policies
- Incident and Near Miss Reporting
- OSHA Inspections/Violations
- Site Inspections (Documentation, corrective actions, and follow up/closeout)
- Revenue #



Why Is Prequalification becoming the rule vs. exception?



Liability

- **Uninsured/underinsured subcontractors**
 - **Workers Comp**
 - **Construction defects**

Lack of enough coverage by a subcontractor will lead to expenses or claims falling on the general contractor.

Questions



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