

WHAT IS A WAIVER OF SUBROGATION?

A Workers' Compensation Waiver of Subrogation typically prohibits the insurer from filing a suit against another party in the event of a loss. This waiver is a commonly misunderstood endorsement and is particularly standard in construction contracts. Plus, it is typically required by written contract between contractor and subcontractor. The subcontractor oftentimes purchases the Waiver of Subrogation endorsement to satisfy this contractual requirement.

Subrogation is the insurance carrier's right to recover the amount of a claim paid to an injured worker by legally pursuing the third party that caused the loss. By adding a Waiver of Subrogation endorsement, the insured is agreeing to give up the carrier's right to seek damages from another party.

THERE ARE TWO TYPES OF WAIVERS OF SUBROGATION:

BLANKET WAIVERS

Applies to all operations of the insured and would prohibit the carrier from recovering the money they paid on a claim from any negligent third party.

Availability:

The waiver can be included during the quoting process or added midterm with many carriers, though not all will do the latter. For those approved to be added midterm, a no known loss letter may be required by the carrier prior to processing the endorsement.

SPECIFIC WAIVERS

Applies only to the person / organization listed on the waiver endorsement.

In general, the information needed to add a specific waiver is:

- Name of person / organization
- Address of services performed
- Job description
- Class code associated with this job / project
- Payroll associated with this job / project

WHO NEEDS A WAIVER OF SUBROGATION?

A general contractor may require this endorsement from their subcontractors to avoid liability of claims that occur while the subcontractor is working for the general contractor. Likewise, an owner / client may require this endorsement from their vendors to avoid liability of claims that occur on their jobsite.

CONTACT

For more information, please contact your local RT Specialty WC broker or underwriter.

WHY IS A WAIVER OF SUBROGATION NEEDED?

Owners and general contractors could require Waivers of Subrogation to assist with protecting themselves, with the cost of protection passed to the vendor or subcontractor.

Typically, subcontractors need to add a Waiver of Subrogation to satisfy contractual requirements. General liability insurers may look more favorably on companies that obtain waivers from their subcontractors, potentially motivating a general contractor to require this endorsement. Similarly, subcontractors with this endorsement included on their WC policy could be perceived as preferable by the general contractor.

The Waiver of Subrogation endorsement does not prohibit the claimant from pursuing legal action against the contractor / owner in the case of negligence leading to injury. It only prohibits the WC carrier.

PURCHASING A WAIVER OF SUBROGATION:

PREMIUMS

The addition of a waiver could expose the subcontractor's insurance carrier to more risk because they cannot recover damages, therefore there is typically an additional charge to add the waiver endorsement to a policy. The cost for a waiver can vary by type, carrier and state.

AVAILABILITY

The waiver can be included during the quoting process or added midterm with many carriers. If it is added midterm, a no known loss letter may be required by the carrier prior to processing the endorsement.

NEW VENTURES

Some WC carriers only allow for Specific Waivers of Subrogation during an insured's first policy year to protect themselves and retain the right to recover from any entity not listed in the Specific Waiver endorsement.

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