



John Deardorff
Chairman, IIAN
Legislative Advisory
Council

Understanding LB 139:

New Nebraska Department of Labor Workers Compensation Insurance website contractor registration requirement

September 18, 2019



Michael J. O'Hara
IIAN Legislative
Representative



Jim Cavanaugh
IIAN Legislative
Representative



**Trusted
Choice®**

**INDEPENDENT INSURANCE
AGENTS OF NEBRASKA**

Understanding LB 139" September 2019 version #15



What does LB139 do?

LB139 addresses two issues:

- 1. it clarifies insured status, and**
- 2. it empowers informed consent for assumption of risk.**

FIRST, LB 139 expands the DoL required registration to clarify which independent contractors in the construction industry have or have not purchased Workers Compensation coverage **on everyone**, so everyone's insured status is clear.

SECOND, LB139 creates a presumption based on that DoL registration so the hiring person can exercise informed consent to assume the risk of no coverage if none is listed.

Caveats

- 1. LB139 is a new DoL reporting requirement and a legal presumption to clarify insured status to determine premiums.**
- 2. LB139 is limited to the construction industry.**
All other types of independent contractors are not covered.
<https://nebraskalegislature.gov/laws/statutes.php?statute=48-2103>
- 3. LB139 DOES NOT CHANGE THE TEN-POINT TEST**
of who is a worker (a.k.a., employee) and thus covered by law.
- 4. LB139 DOES NOT CHANGE EXISTING EXEMPTIONS**
for owners and executives from obtaining Workers Compensation coverage.
48-115(9) and (10) <https://nebraskalegislature.gov/laws/statutes.php?statute=48-115>

WHAT IS THE TEN POINT TEST?

Nebraska Courts use the “ten point” test to determine whether a person is an “employee” or not

- (1) the extent of **control** which, by the agreement, the employer may exercise **over** the **details** of the work;
- (2) whether the one employed is engaged in a **distinct occupation** or business;
- (3) the type of occupation, with reference to whether, in the locality, the work is usually done **under** the **direction** of the employer or by a specialist without supervision;
- (4) the **skill** required in the particular occupation;
- (5) whether the employer or the one employed **supplies** the instrumentalities, **tools, and** the **place of work** for the person doing the work;
- (6) the length of **time** for which the one employed is engaged;
- (7) the method of **payment**, whether **by the time or by the job**;
- (8) whether the work is **part** of the **regular business** of the employer;
- (9) whether the parties believe they are creating an **agency** relationship (NOTE: as distinct from employment);
- (10) whether the **employer is or is not in business.**

See, *Cruz v Lopez*, 301 Neb. 531 (2018).
Relative importance of the ten items varies by context. Unlike normal law, this is a **SUBSTANCE OVER FORM** analysis. Additionally, this analysis is **biased toward conclusion “employee.”**

ABBREVIATED TEN POINT TEST

you ARE an
EMPLOYEE (EE) of the GENERAL CONTRACTOR (GC) IF:

1. GC controls
2. EE not distinct occupation;
3. EE occupation is directed;
4. EE less skill;
5. GC supplies tools and place of work;
6. EE hired for indefinite time;
7. EE paid by the hour;
8. part of GC's regular business
9. GC does not create "agency"; -- **OR** --
10. GC is in business

**SUBSTANCE
OVER
FORM analysis**

**BIASED
TO CONCLUDE
AN EMPLOYEE**

Text of LB 139

Section 1. Section 48-2117, Reissue Revised Statutes of Nebraska, is amended to read: 48-2117

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967.

(2) The data base shall be accessible on the web site of the Department of Labor.

(3) The data base shall include, but not be limited to, the following information with respect to each registered contractor:

(a) Whether the contractor carries workers' compensation insurance in accordance with the Nebraska Workers' Compensation Act;

(b) Whether the contractor is self-insured in accordance with the Nebraska Workers' Compensation Act; or

(c) Whether the contractor is a sole proprietor with no employees and does not carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act.

Text of LB 139 (continued)

(4) The information described in subdivision (3)(c) of this section, as it is listed in the data base, creates a **presumption of no coverage** that may be rebutted by an insurer acknowledging coverage for a claimed covered event.

(5) The information required under subsection (3) of this section and the presumption provided in subsection (4) of this section are solely for the **purpose of establishing premiums** for workers' compensation insurance and shall not affect liability under the Nebraska Workers' Compensation Act or compliance efforts pursuant to section 48-145.01.

(6) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

Sec. 2. Original section 48-2117, Reissue Revised Statutes of Nebraska, is repealed.

Glossary of Acronyms

DoI	Nebraska Department of Insurance
DoL	Nebraska Department of Labor
EE	employee (statutory synonym for “worker”)
E&O	Errors and Omissions
GC	general contractor
IC	independent contractor
LB139	Legislative Bill 139 (2019 session; effective August 30, 2019)
LLC	limited liability company
LLP	limited liability partnership
Sub S	IRS tax treatment of a corporation with pass through of income
WC	workers compensation insurance
WCC	Workers Compensation Court



New Users

Don't have a user profile? Create one using the button below.

[Create User Profile](#)

Returning Users

[Log In](#)

Welcome to Contractor Registration

The Nebraska Contractor Registration Act requires contractors and subcontractors doing business in Nebraska to register with the Nebraska Department of Labor. Create a user profile or

[Search Registered Contractors](#)

[Information and FAQs](#)

Insured Status

Department of Labor Contractor registration website

Option One:
one or more
employees

Identity Information

Business Information

Services & Employee Information

Officers, Members & Subcontractors

Insurance Information

Tax Option

Information & Authenticity

Review

Payment Options

Services & Employee Information

Describe the contracting services and the principal products provided, or NAICS Code:

Drywall and Insulation Contractors

Note: Choose a correct service from the drop-down box OR write a keyword of your service. For e.g. If you are a "Roofing Contractor", write the word "Roof" OR if you are dealing with some Construction, write "Constr.", system will display meaningful results for you to select one.

Other

If you don't find the service to select, please describe your service in a few words.

How many employees does the business have? (***Required**)

1

Note: Enter '0' if you have NOT hired any. DO NOT INCLUDE YOURSELF OR ANY POTENTIAL FUTURE EMPLOYEES IN THIS NUMBER.

Do you pay more than three thousand dollars annually to your employee/s?

Yes

No

Department of Labor registration website

Identity Information

Business Information

Services & Employee Information

Officers, Members & Subcontractors

Insurance Information

Tax Option

Information & Authenticity

Review

Payment Options

Insurance Information

Nebraska Unemployment Insurance Number

Worker's Compensation Insurance Agent:

Name

Phone Number

Email

Department of Labor registration website

Option Two:
Zero
employees,
with WC

Identity Information

Business Information

Services & Employee Information

Officers, Members & Subcontractors

Insurance Information

Tax Option

Information & Authenticity

Review

Payment Options

Services & Employee Information

Describe the contracting services and the principal products provided, or NAICS Code:

Drywall and Insulation Contractors

Note: Choose a correct service from the drop-down box OR write a keyword of your service. For e.g. If you are a "Roofing Contractor", write the word "Roof" OR if you are dealing with some Construction, write "Constr.", system will display meaningful results for you to select one.

Other

If you don't find the service to select, please describe your service in a few words.

How many employees does the business have? (*Required)

0

Note: Enter '0' if you have NOT hired any. DO NOT INCLUDE YOURSELF OR ANY POTENTIAL FUTURE EMPLOYEES IN THIS NUMBER.

Does this business elect to carry worker's compensation insurance on the owner(s) and officer(s) of the company?

Yes

No

i Provide a copy of your certificate of liability insurance signifying current worker's compensation coverage to our office.

Department of Labor registration website: **NEW INFO**

Does this business elect to carry worker's compensation insurance on the owner(s) and officer(s) of the company?

Yes

No



Provide a copy of your certificate of liability insurance signifying current worker's compensation coverage to our office.

Previous

Next

Identity Information

Business Information

Services & Employee Information

Officers, Members & Subcontractors

Insurance Information

Tax Option

Information & Authenticity

Review

Payment Options

Insurance Information

Worker's Compensation Insurance Agent:

Name

Phone Number

Email

[Previous](#) [Next](#)

Department of Labor registration website

Option Three:
Zero
employees,
no WC

Identity Information

Business Information

Services & Employee Information

Officers, Members & Subcontractors

Insurance Information

Tax Option

Information & Authenticity

Review

Payment Options

Services & Employee Information

Describe the contracting services and the principal products provided, or NAICS Code:

Drywall and Insulation Contractors

Note: Choose a correct service from the drop-down box OR write a keyword of your service. For e.g. If you are a "Roofing Contractor", write the word "Roof" OR if you are dealing with some Construction, write "Constr.", system will display meaningful results for you to select one.

Other

If you don't find the service to select, please describe your service in a few words.

How many employees does the business have? (*Required)

0

Note: Enter '0' if you have NOT hired any. DO NOT INCLUDE YOURSELF OR ANY POTENTIAL FUTURE EMPLOYEES IN THIS NUMBER.

Does this business elect to carry worker's compensation insurance on the owner(s) and officer(s) of the company?

Yes

No

i Selecting 'No' creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage for a claimed event.

Department of Labor registration website: **NEW INFO**

Does this business elect to carry worker's compensation insurance on the owner (s) and officer(s) of the company?

This field is required.

Yes

No



Selecting 'No' creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage for a claimed event.

[Previous](#)

[Next](#)

The Problem

Insurer assumes all IC are EEs of GC and without WC coverage by IC,
So,
insurer routinely insists that the GC pay for WC coverage on all of IC's personnel.

If an insurer audit discovers
an IC not listed as an EE of the GC on the GC purchased WC policy,
and
if that IC does not have a WC policy on that person,
then
the insurer wants to increase the GC's premiums to cover all of ICs persons.

LB 139 covers all construction industry businesses.

LB 139 can not be read in isolation.

LB 139 must be read in the context of
all of the very many Workers Compensation statutes.

48-114(2) defines “employer” very broadly.

<https://nebraskalegislature.gov/laws/statutes.php?statute=48-114>

This definition is so broad,
especially when coupled with the definitions of the owner and executive exemptions,
that **“sole proprietor” means all exempt persons.**

So, who is exempt

from the duty to purchase Workers Compensation coverage?

Owners and executives WHEN WORKING IN THEIR OWN COMPANY are exempt from the duty to obtain WC coverage on themselves.

“**Owner**” defined by 48-115(10) as 25% or more ownership

“**Executive**” defined by 48-115(9)

as officer per bylaws

and

either

for-profit legal entity plus own less than 25%,

or

non-profit legal entity plus at least \$1,000 per year in compensation

Owners and executives are exempt **WHEN** working in their own business.

CRITICALLY NOTE

A “worker” is any human who does work at a work site;
a “worker” is a statutory synonym for employee.

If a human exempt as an owner or an executive does work at the work site of a general contractor, then that human becomes an employee of the general contractor subject to the ten-point test.

By law, all employees always are covered by Workers Compensation. (48.115.01)

LB139 registration makes clear whether an independent contractor’s exempt person who arrives at the general contractor’s construction work site does so **with or without WC coverage.**

Let's repeat that. **SOMETIMES** owners and executives are **EXEMPT**.

OTHER TIMES owners and executives **ARE NOT EXEMPT**.

This is a source of great confusion.

When

an owner or executive does work at the work site of a general contractor,
then

the ten point test is used to determine whether
that work is done as an employee or as an independent contractor.

Recall, the ten point test is **biased towards the conclusion “employee”**
and the analysis is **substance over form**
(read: your contract say “independent contractor” does not determine the answer).

LB 139 Addresses Two Issues: **FIRST** **clarifying insured status**

Registration makes clear which independent contractors in the construction industry have or have not purchased Workers Compensation coverage on everyone.

LB 139 makes it harder for independent contractors to hide the fact they have not purchased Workers Compensation coverage for all humans that will be a worker at the general contractor's construction **work site. This practice is known as a "**ghost policy**."**

LB 139 Addresses Two Issues: FIRST

What is a “ghost policy?”

An owner or executive working in their own business is exempt.

See, 48-115(9) and 48-115(10).

<https://nebraskalegislature.gov/laws/statutes.php?statute=48-115>

Any business that has employees must buy WC coverage on all employees

<https://nebraskalegislature.gov/laws/statutes.php?statute=48-115.01>

If a business has all of its **work done by exempt persons** and has **zero employees**

but **buys WC coverage on its zero employees,**
then that business has a “ghost policy.”

However, if the business’ number of employees varies between zero and more than zero, then having such a policy in place might add needed flexibility.

LB139 Addresses Two Issues: **SECOND**

informed consent and assumption of risk

LB139 seeks to create premium stability and predictability;

LB139 creates a presumption

that the LB139 DoL registration is accurate

for calculating premiums. See, new subsec. (4) in 48-2117.

Legally, a presumption is **true until disproved in a court of law.**

So, if an insurer audits an insured construction general contractor and the insurer discovers via the LB139 registration an independent contractor with WC coverage,

then the GC's premiums should not change.

Premiums owed should not change unless the Workers Compensation Court, when using the ten-point test, concludes that an injured exempt person is, in fact, an employee of the general contractor.

LBI39 Addresses Two Issues: **SECOND**

But note, may not is not the same as can not.

An insurer may not require extra premiums prior to a court (e.g., WCC) rebutting the presumption But an insurer can insist that an insured GC past premiums be adjusted.

If an insurer pressures a GC to adjust past premiums, then the independent agent has several options, including switching to a different insurer, contacting the DoL, WCC, or DoI.

It is in everyone's best interests for the independent insurance agent to use the LBI39 registration to prompt the use of contract law to increase Workers Compensation policy coverage by ICs.

Premium Presumption

LB139 creates a NEW presumption on how to calculate some premiums.

The presumption is that the LB139 DoL registration info is accurate.

So, if an audit, discovers uninsured exempt persons but does not discover additional humans at the worksite who lack coverage then the previously paid premiums should not change.

Especially so if the **collected premiums match both the LB139 registration and the general contractor's contract** requiring the IC to carry coverage.

ALSO NOTE,

this presumption will be used both by the DoL and WC Court when doing **enforcement of the legal penalties for misrepresenting WC coverage status** (e.g., magnitude of offense).

Premium Presumption, continued

The LB139 presumption means the DoL registration controls a person's status as an "employee" or as an "independent contractor" for premium calculation.

An "exempt" registration by the IC means that IC personnel will not be a "worker" at the GC's work site.

If the WCC finds that IC personnel to be a "worker", then the IC can be subject to penalties for false registration or misrepresentation of WC coverage.

Civil Penalty Language

48-2114 authorizes DoL to impose legal penalties both for not registering and for not having accurate registration information (e.g., WC coverage status).

The DoL administrative penalties are initiated with a **citation**. If the contractor contests the citation a hearing will be held by a DoL Administrative Law Judge.

First offense is \$500 fine and subsequent offenses are \$5,000 fine.

If civil enforcement action is initiated, then either the State Attorney General or an attorney hired by DoL will prosecute that civil action.

Criminal Penalty Language

48-125.01 provides a penalty of a **Class I misdemeanor** (i.e., between zero and one year in jail and/or \$1,000 fine) for knowing non-payment of WC benefits that are owed.

48-144.01 requires an employee injury report to WC court by an employer within 10 days of an injury.

48-144.04 makes any **failure to timely file that report a Class II misdemeanor** (i.e., between zero and six months in jail and/or \$1,000 fine).

How does LB139 play out?

- 1.** The **new** LB139 registration **duty** is added to existing registration duties for construction industry ICs and added to existing duties regarding reporting of WC coverage.
- 2.** To register falsely or to misrepresent WC coverage creates both civil liability and criminal **liability for the IC**.
Fines start at \$500 and go to \$5,000: with each day a separate offense.
- 3.** Do note, the premiums for a WC policy might be smaller than those fines.
- 4.** IC owners and executives *that do not work at the GC's work site are exempt*.
If an IC registers as "exempt", but then acts as an employee of a GC, then it could be treated as registering falsely or as misrepresenting WC coverage.
- 5. Both market pressures and legal pressures** on the GC, IC, & insurer will increase WC coverage purchases for the IC by the IC and thus fewer GCs will be surprised by audit driven demands to adjust WC premiums.

APPLICATION OF LBI39 TO DIFFERENT CONTEXTS

LBI39 seeks to identify which construction workers at a construction work site have Workers Compensation coverage.

All owners and executives are exempt.

But, some owners and/or executives are workers, and some are not workers.

Owners and executives that **DO NOT WORK** at a construction work site **ARE NOT WORKERS**; and thus do not need WC coverage via the general contractor.

LBI39 targets DISCLOSURE OF EXEMPT PERSONS without WC Coverage.

APPLICATION OF LBI39 TO DIFFERENT CONTEXTS

Scenario One

[1] No legal entity; a single owner; no executives; & zero employees.

Most frequently, this is what is meant by the phrase “sole proprietor”.

But, LBI39 uses the phrase to include many other contexts.

Owner is the sole construction worker; frequent buyer of a “ghost policy.”

The owner is exempt WHEN doing work in the owner’s own business.

For example exempt WHEN directly hired by a homeowner

(and not hired by a general contractor).

LBI39 targets this context so that

both the homeowner and the construction general contractor

can see the LBI39 registration and assume the risk of hiring a worker going bare.

(INFORMED CONSENT)

APPLICATION OF LBI39 TO DIFFERENT CONTEXTS

Scenario Two

**[2] No legal entity;
two or more owners and/or one or more executives; and
one or more employees.**

LBI39 targets this context because all employers must buy Workers Compensation coverage on all employees.

But, while the **owners and executives are exempt** from the duty to buy WC coverage on themselves, they must purchase **WC coverage on its employees.**

Thus, prior to LBI39, the DoL registrations was ambiguous because the registration only said The IC had **some** WC Policy. With LBI39, the DoL registration is clear as to which IC personnel have WC coverage, and which do not.

APPLICATION OF LBI39 TO DIFFERENT CONTEXTS

Scenario Three

**[3] Legal entity (e.g., corporation; LLC; LLP);
one or more owners and/or one or more executives; and
zero employees.**

Travelers Indemnity Company v. Gonzalez Construction, Inc, Sep. 3, 2019, No.A-18-249

**Clearly, because there are zero employees
some of the exempt owners and/or executives are workers: sometimes.**

**If
construction independent contractor is hired by a general contractor
then
the LBI39 registration will make equally clear to the GC
whether all of IC's exempt persons have
WC coverage purchased by the IC: or not. (clarity of insured status)**

APPLICATION OF LBI39 TO DIFFERENT CONTEXTS

Scenario Four

- [4] Legal entity (e.g., corporation; LLC; LLP);
one or more owners and/or one or more executives; and
one or more employees.**

LBI39 targets this context because this firm must have a Workers Compensation coverage on its employees; but, **some exempt owners or executives might be workers for the GC.**

Again, prior to LBI39, the DoL registration was ambiguous because the registration only said the IC had **some** WC Policy. With LBI39, the DoL registration is clear as to which IC personnel have WC coverage, and which do not.

Given LBI39...

How ought independent insurance agents counsel their clients to manage the agent's E&O liability?

[A] Make sure all construction industry independent contractors update their Department of Labor registration starting August 31, 2019.

<https://www.dol.nebraska.gov/Conreg>

[B] **Alert all construction general contractors and all homeowners of the existence of the LBI39 registration; and urge them to check the registration BEFORE HIRING a contractor; and only to hire contractors with WC coverage on all workers at the work site.**

Given LBI39...

How ought independent insurance agents counsel their clients to manage the agent's E&O liability?

[C] Urge all (not just construction industry) independent contractors to buy WC coverage on all owners and all executives; ESPECIALLY SO IF that exempt person is a WORKER either in the firm or when contracting out.

[D] IF your client CHOOSES to NOT BUY WC on exempt persons doing work, THEN get a SIGNED, WRITTEN acknowledgement of INFORMED CONSENT.

Workers' Compensation Insurance
Exempt Person: Owner or Executive
REJECTION FORM (page 1 or 2)

Date: _____ **Named Insured:** _____

Organized As: _____
(Sole Proprietor / General Partnership / Corp / LLC / LLP / etc.)

Named Individual: _____

Title: _____

Exempt Owner:

_____ YES NO _____ over 25% ownership (thus exempt when in your own for-profit business)

Exempt Executive:

_____ YES NO _____ Title listed above is in the bylaws: for-profit or not-for-profit

_____ YES NO _____ for-profit & more than 0% but less than 25% ownership
(only exempt if for-profit & office in bylaws)

_____ YES NO _____ not-for-profit organization
(only exempt if not-for-profit & office in bylaws & \$1k comp.)

_____ YES NO _____ not-for-profit annual compensation of \$1,000 or more

Workers' Compensation Insurance
Exempt Person: Owner or Executive
REJECTION FORM (page 2 of 2)

I, the undersigned, hereby elect **NOT to bring myself within the provisions** of the Nebraska Workers' Compensation Act as an employee of the Named Insured. I understand that **if** during the policy period, my **status** as an exempt owner or my status as an exempt executive **changes**, and/or I desire to be covered as an employee of the Named Insured for purposes of workers' compensation, it is **my responsibility to elect workers' compensation coverage** in writing, and that coverage will be effective upon receipt of my written election by the insurer.

I also understand that my exempt status exists when working within the Named Insured; and I might or might not be an employee when working for some other employer. My exempt status might not exist when working for some other employer if the Ten Point Test indicates I'm an employee instead of an independent contractor.

Signature: • _____

On behalf of the Named Insured, I acknowledge that it is the Named Insured's responsibility to ensure that exempt owners and exempt executive elect workers' compensation coverage in writing, and that coverage will be effective upon receipt of by the insurer of written election. I further acknowledge that if during the policy period, the exempt status of a person changes, and/or that person desires to be covered as an employee of the Named Insured for purposes of workers' compensation, it is the Named Insured's responsibility to ensure that that person elect workers' compensation coverage in writing.

Signature: • _____

Title: • _____

Given LBI39...

How ought independent insurance agents counsel their clients to manage the agent's E&O liability?

[E] For all construction general contractor clients, urge them to alter their bid documents so as to require all bidding construction independent contractors **TO CONTRACTUALLY COMMIT to the general contractor that the **INDEPENDENT CONTRACTOR SHALL BUY Workers Compensation coverage for all humans who do work, including exempt owners and executives, that will come onto the general contractor's work site. See next slide with 48-116 second sentence.****

Given LB139...

How ought independent insurance agents counsel their clients to manage the agent's E&O liability?

[E] **Continued. See, 48-116, second sentence. (Hold Harmless)**

<https://nebraskalegislature.gov/laws/statutes.php?statute=48-116>

Any person, firm, or corporation creating or carrying into operation any scheme, artifice, or device to enable him or her, them, or it to execute work without being responsible to the workers for the provisions of the Nebraska Workers' Compensation Act shall be included in the term employer, and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of such act. This section, however, shall not be construed as applying to an owner who lets a contract to a contractor in good faith, or a contractor, who, in good faith, lets to a subcontractor a portion of his or her contract, if the owner or principal contractor, as the case may be, requires the contractor or subcontractor, respectively, to procure a policy or policies of insurance from an insurance company licensed to write such insurance in this state, which policy or policies of insurance shall guarantee payment of compensation according to the Nebraska Workers' Compensation Act to injured workers.

SUMMARY page 1 of 2

- 1. Before LB139 ICs could hide behind an ambiguous registration (e.g., ghost policy)**
- 2. Before LB139 there was no presumption that the DoL registration was accurate for calculating WC premiums.**
- 3. LB139 requires NEW INFO in the DoL website registration for construction industry independent contractors and creates a presumption for calculation of WC premiums.**
- 4. LB139 registration makes clear who has and who has not purchased WC coverage on every individual.**

SUMMARY page 2 of 2

5. That clarity will permit and foster informed consent for assumption of the risk for WC policy premiums.

6. That informed consent will create market pressure on independent contractors to purchase WC coverage on their exempt persons.

7. The presumption will create legal pressure on insurers to calculate WC premiums for GCs based upon the DoL registered status of every individual.

Questions and Answers

**Additional
information
for your benefit**

What does the National Council on Compensation Insurance (NCCI) recommend?

National Council on Compensation Insurance

Rule H. Subcontractors

1. In those states where workers compensation laws provide that a contractor is responsible for the payment of compensation benefits to employees of its uninsured subcontractors, **the contractor must furnish satisfactory evidence that the subcontractor has workers compensation insurance in force covering the work performed for the contractor.** The following documents may be used to provide satisfactory evidence:

- Certificate of insurance for the subcontractor's workers compensation policy
- Certificate of exemption
- Copy of the subcontractor's workers compensation policy

NCCI Rule H. Subcontractors (Cont.)

2. For each subcontractor not providing such evidence of workers compensation insurance, additional premium must be charged on the contractor's policy for the uninsured subcontractor's employees according to Subcontractor Table 1 and 2 below.

Subcontractor Table 1
(Exceptions: [FL](#), [TN](#))

If the contractor has not furnished evidence of workers compensation insurance and . . .	Then to calculate the additional premium . . .
Furnishes complete payroll records of the subcontractor's employees . . .	Use the payroll detailed in the records
Does not furnish complete payroll records and the subcontract price does not reflect a definite payroll amount . . .	Use the full subcontract price of the work performed during the policy period by the subcontractor as payroll
Does not furnish complete payroll records, but documentation of a specific job discloses that a definite amount of the subcontract price represents payroll . . .	Use the payroll amount indicated by the documentation as the payroll, subject to the minimums in Subcontractor Table 2 below

Subcontractor Table 2

(Exceptions: [FL](#), [TN](#))

If the job involves:	Then the minimum to calculate additional premium is:
Mobile equipment with operators (such as but not limited to earth movers, graders, bulldozers, or log skidders)	Not less than 33 1/3% of the subcontract price
Labor and material	Not less than 50% of the subcontract price
Labor only	Not less than 90% of the subcontract price
Piecework	Not less than 100% of the subcontract price (The entire amount paid to pieceworkers must be the payroll.)

3. Vehicles with drivers, chauffeurs, messengers, or helpers entitled to benefits under workers compensation insurance law may be engaged under verbal or written contract. The amount used to calculate the premium is determined in the following manner:

Subcontractor Table 3

(Exceptions: [LA](#), [OR](#), [RI](#))

If the owner of such vehicles has not furnished evidence of workers compensation insurance and . . .	Then . . .
Payroll can be obtained	The total payroll of these drivers must be included as payroll of the insured employer that contracted for the vehicles.
Payroll cannot be obtained or the driver is an owner-operator and does not receive a set payroll	1/3 of the total contract price for the vehicles must be included as payroll of the drivers.
The contract price does not include the cost of fuel, maintenance, or other services provided to the owner or the owner-operator of a vehicle under contract	The value of these goods and services must be added to the contract price before determining the 1/3 amount.

4. In all cases, the payroll determined for subcontractors is assigned to the classification that would have applied if the individuals had been employees of the contractor.
5. In all cases, if an [experience modification](#) has been established for the contractor, this experience modification must be applied to the premium developed for the uninsured subcontractor.

The Future: California's New ABC Test

The California Supreme Court altered its precedence whereupon the California legislature promptly enacted AB5 (link below) which adopted the Court's **ABC (a.k.a., app based company) test** for identifying an employee versus an independent contractor.

<https://www.billtrack50.com/BillDetail/996562>

- A. free from hiring company control,
- B. work not central to hiring company's business, --AND--
- C. hired person independent business in that industry.

A person is an EE if not **A and B and C.**