



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU**

October 30, 2002

CIRCULAR LETTER NO. 1902

To All Members and Subscribers of the Bureau:

**COVERAGE FOR SOLE PROPRIETORS AND PARTNERS OF LEGAL PARTNERSHIPS
AND
EXEMPTION FROM COVERAGE OF CORPORATE OFFICERS OR DIRECTORS**

As advised in Circular Letters 1898 and 1901, An Act Relative To Workers' Compensation Coverage For Sole Proprietors, Partnerships And Corporate Officers, also known as Chapter 169 of the Acts and Resolves of 2002, became effective on October 23, 2002. This Act amends Massachusetts General Laws Chapter 152, § 1(4), to make it possible (i) for sole proprietors and partners of a legal partnership to elect coverage for themselves as employees and (ii) for certain corporate officers and directors to exempt themselves from coverage.

If a sole proprietor or partner of a legal partnership wants to be covered as an employee under a workers' compensation insurance policy, he/she must submit a written request directly to their insurance carrier or to the Bureau if an application is being submitted for coverage through the Assigned Risk Pool. If a sole proprietor or partnership obtains any workers' compensation insurance policy without specifically electing coverage in writing for the sole proprietor or for each or any partner, then the sole proprietor and partners shall not be covered under that policy.

The effective date of coverage for the sole proprietor or partner shall be either (i) the next policy effective date following the carrier's receipt of a written request from the sole proprietor or partner, or (ii) the day following the carrier's receipt of a written request that the election for coverage be made effective mid-term. All such written requests must be on company letterhead and signed by the sole proprietor or partner electing coverage. Once electing to be covered under a workers' compensation insurance policy, no sole proprietor or partner may opt out of said coverage until the completion of the current policy term.

Insurance carriers who receive these written requests for coverage should endorse the policy with the *Sole Proprietors, Partners, Officers and Others Coverage Endorsement*, WC000310, a National Council on Compensation, Inc. endorsement which was approved for use in Massachusetts in 1984. In the near future, we expect to add a Massachusetts Explanatory Note to the *Endorsement* to further clarify usage in Massachusetts.

As advised in Circular Letter 1901, the premium for each sole proprietor or partner of a legal partnership who elects to become an employee and obtain workers' compensation insurance coverage for themselves shall be based on the established fixed amount of \$45,900. This fixed amount is based on the State Average Weekly Wage (SAWW), effective as of October 1, 2002. The SAWW is promulgated annually by the Massachusetts Director of Employment and Training and is subject to change.

Any eligible corporate officer or director that wants to be exempt from coverage must first obtain approval from the Massachusetts Department of Industrial Accidents (DIA). A *Form 153* must be filed with and approved by the DIA. The employer must then submit a copy of the filed and approved *Form 153* to their insurance carrier or to the Bureau if coverage is sought through the Assigned Risk Pool. ***Insurance carriers must not process requests to exempt corporate officers or directors without having received from the employer a Form 153 that has been filed with and approved by the DIA.***

An approved *Form 153* will be marked as such in the upper right hand corner of the form and will indicate the date of approval and the initials of the commissioner of the DIA and/or his designee. Upon notification to the insurance carrier that said corporate officer(s) or director(s) has exercised his or her right of exemption, the salary and/or compensation of the exempted corporate officer(s) or director(s) shall no longer be considered in calculating the premium for the corporation's workers' compensation policy. Notwithstanding any earlier date indicated on an approved *Form 153*, the effective date of the requisite changes to any existing workers' compensation policy shall be either (i) the next policy effective date following the carrier's receipt of the approved *Form 153*, or (ii) the day following the carrier's receipt of the approved *Form 153* along with a written request that the election be made effective mid-term. All such written requests must be on the employer's corporate letterhead and signed by a corporate officer.

Insurance carriers who receive an approved *Form 153* should endorse the policy with the *Partners, Officers and Others Exclusion Endorsement*, WC000308, a National Council on Compensation Insurance, Inc endorsement which was approved for use in Massachusetts in 1984. In the near future, we expect to add a Massachusetts Explanatory Note to the *Endorsement* to further clarify usage in Massachusetts.

The Bureau expects to issue another Circular Letter after the DIA Regulations (452 CMR c.8.00 et. seq.) are finalized. Detailed information about the *Form 153* is available on the DIA's web-site at www.mass.gov/dia.

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