

**November 2018**

**WEST VIRGINIA INFORMATIONAL LETTER**

**NO. 201**

**TO: All Insurance Companies Writing Workers' Compensation Insurance Policies in the State of West Virginia, Insurance Trade Associations, Insurance Producers and Other Interested Persons**

**RE: Letters of Exemption From Workers' Compensation Insurance Coverage**

The purpose of this Informational Letter is to clarify eligibility requirements for West Virginia employers who wish to submit an application for a letter of exemption from mandatory West Virginia workers' compensation insurance coverage and to make clear that while an independent contractor performing services for an employer may not need to be covered under an employer's workers' compensation insurance policy, an independent contractor is not an exempt employer for purposes of applications to the Insurance Commissioner for letters of exemption pursuant to W.Va. Code R. § 85-8-4.4.

With very limited exception, every employer is required to obtain West Virginia workers' compensation coverage for the protection of its employees. However, pursuant to W.Va. Code R. § 85-8-4.4, an employer who is otherwise required to maintain mandatory West Virginia workers' compensation coverage may apply to the Insurance Commissioner for a letter of exemption from coverage should the employer qualify for one of the exemptions set forth in W.Va. Code R. § 85-8-4.3. The referenced subsections provide as follows:

4.3. Exemptions. An employer who is otherwise required to maintain mandatory West Virginia workers' compensation coverage is exempt from the requirement in the following circumstances:

- a. An employer of domestic services as defined in subsection 3.3 of this rule is not required to carry West Virginia workers' compensation coverage for any individuals hired to perform such domestic services;
- b. An employer of five (5) or fewer full-time employees in agricultural services is not required to carry West Virginia workers' compensation coverage for those employees;
- c. An employer who is a casual employer;
- d. An employer who is a church;

e. An employer who is engaged in organized professional sports activities, including an employer of trainers and jockeys engaged in thoroughbred horse racing: *Provided*, That the employer must carry coverage for its employees who are not participating in the organized professional sports activities. For example, an employer of jockeys and trainers engaged in thoroughbred horseracing may exempt such jockeys and trainers, but if the same employer also employs a driver to transport horses and equipment, the driver must be provided coverage;

f. A volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality or other government entity or political subdivision, or a volunteer organization created or sponsored by a government entity, political subdivisions or an area or regional emergency medical service board of directors in furtherance of the purposes of the emergency medical services act of article four-c [§§16-4C-1 et seq.], chapter sixteen of this code: *Provided*, That if any such employers have paid employees, they must provide West Virginia workers' compensation for such paid employees; or

g. An employer of employees who are provided coverage for benefits under the federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, et seq., is exempt from having to carry West Virginia workers' compensation coverage for such employees, but must provide West Virginia workers' compensation coverage for employees who are not provided coverage for benefits under the federal Longshore and Harbor Workers' Compensation Act.

4.4. Application for letter of exemption. An employer may apply to the Insurance Commissioner on forms supplied by the Insurance Commissioner for a letter of exemption from coverage. The Insurance Commissioner will review the application and all evidence submitted by the employer and, based on the provisions of chapter twenty-three of the West Virginia Code and this rule, may make such determination as the Insurance Commissioner deems proper. The Insurance Commissioner shall charge a processing fee for each application in the amount of twenty-five dollars (\$25).

To be eligible to file an application for letter of exemption from otherwise mandatory workers' compensation insurance coverage, an employer must meet one of the specific exemptions as set forth in W.Va. Code R. § 85-8-4.3. It should be noted that the determination of independent contractor status, which is separately addressed in W.Va. Code R. § 85-8-6, is not included in the

above-stated categories of employer exemptions set forth in W.Va. Code R. § 85-8-4.3.<sup>1</sup> Accordingly, independent contractors are not entitled to apply for a letter of exemption from coverage pursuant to W.Va. Code R. § 85-8-4.4 on that basis alone.

Please e-mail any questions concerning this Informational Letter to: [OICInformationalLetters@wv.gov](mailto:OICInformationalLetters@wv.gov) or call (304) 558-0401.



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<sup>1</sup> See W.Va. Code R. §85-8-6.2. In addition, W.Va. Code R. §85-8-6.6.b. states: “The private carrier may make its own initial decision regarding the determination of all issues relevant to the classification of employees, rates and payroll: *Provided*, That any employer that disagrees with the decision made by its private carrier and is not able to reasonably resolve the dispute may file a protest with the Insurance Commissioner’s designated rating organization for workers’ compensation, or, in the event that the dispute involves issues of State law which the rating organization refuses to resolve, with the Insurance Commissioner. All private carriers issuing final decisions to insured employers on matters discussed in this subdivision shall provide clear instructions to the insured employer regarding the procedure for filing a protest to the private carriers’ decision.”