



06/03/04

TO: VIAA Member Agents Cc:

FROM: Frederick M. Barrett  
Principal Insurance & Market Analyst

RE: Changes in Workers' Compensation Insurance Requirements and the Relationships  
between BISHCA, the NCCI and the Vermont Department of Labor & Industry

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Please see the memo from Deputy Commissioner Laura Collins of Labor & Industry for an outline of the recent changes in Title 21 V.S.A § 601 (14).

**Please note:** As Deputy Collins mentioned, exceptions *must* meet all of the requirements set out in law. If one or more of the six requirements are not met, the exception may fail and an injured employee may file a claim for benefits against either or both parties to the agreement, which would include the general contractor in her example. It will serve you and your insured clients to check with your carriers to see how to best identify sole proprietors and partner owners at the time of application and throughout the policy year. This will avoid confusion at the time of policy audit.

**Please note:** There is a change under paragraph (H) which no longer requires a corporate entity to carry its own policy, if *all corporate officers* elect to fall outside of the provisions of the chapter. *Remember*, the election must be written and on the form prescribed by Labor & Industry; also, as soon as the entity hires a non-officer employee, a policy must be purchased.

Bob Coyle has asked if we could add a little clarity to how BISHCA, the NCCI and Labor & Industry interact with each other; in the hopes that our Agency Force could better understand where authorities lie and who can answer which questions.

Title 21 V.S.A. governs the Department of Labor & Industry. Issues relating to employers, employees, and employee claims are under the jurisdiction of Labor & Industry. Coverage issues, injured workers' claims processing, benefits due, who is required to carry a workers' compensation policy are all items which fall under Title 21.

Title 8 V.S.A. governs BISHCA (the Department of **B**anking, **I**nsurance, **S**ecurities and the **H**ealth **C**are **A**dministration). Issues relating to carriers' behavior in the market place, rates, forms and the workers' compensation plan (WCIP) are under the jurisdiction of BISHCA.

Title 8 V.S.A. directs the Commissioner of Insurance (BISHCA) to designate an advisory or service organization to assist him in gathering, compiling and reporting relevant statistical information; to develop and file for approval a uniform classification system and a uniform experience rating plan; to develop and file manual rules and a uniform schedule rating plan.

The **NCCI** (National Council on Compensation Insurance) is our advisory / service organization. It administers the plan under BISHCA's direction and **assists in resolving disputes**, which may arise from a carrier's application of the WCIP rules, classifications and experience modification factors. The great majority of disputes are settled on this level.

If a dispute remains unresolved, employers have the right to a formal appeal before the Vermont Workers' Compensation Appeals Board. The Board consists of five members who are appointed by the Commissioner: 1 from the NCCI, 2 from the private sector, 1 from an insurance carrier and 1 from the agency community.

Such an appeal could be followed by a hearing before the Commissioner and ultimately in a suit brought before the superior court.

We hope this better explains the different functions assigned to each of three entities mentioned. If you should have additional questions please visit the Workers' Compensation Resource page on our web-site at:

[http://www.bishca.state.vt.us/InsurDiv/Workers\\_comp\\_resources/workerscomp\\_resources.htm](http://www.bishca.state.vt.us/InsurDiv/Workers_comp_resources/workerscomp_resources.htm)

If you still haven't found what you need, BISHCA's number is (802) 828-3301