



Risk Management

Are Workers' Compensation Certificates of Insurance Binding?

by

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Contractors (and subcontractors hiring sub-subcontractors) regularly require a Certificate of Workers' Compensation insurance from subcontractors to demonstrate a subcontractor has worker's compensation insurance in place to cover workplace injuries at the contractor's jobsite.

The subcontractor generally contacts its insurance agent or the insurance company and asks for a Certificate of Insurance (COI) to be issued to the contractor hiring the subcontractor. Once the contractor receives the COI, the contractor allows the subcontractor to begin work on its project under the assumption the subcontractor is covered for any workplace injury.

A recent decision by the Colorado Supreme Court in *Pinnacol Assurance v. Hoff*, 375 P.2d 1214 (Colo. 2016) makes it clear that a COI stating there is coverage for workers' compensation injuries has no legal effect. A contractor (or subcontractor hiring a sub-subcontractor) is not protected by the COI and will be liable under its insurance for work injuries by any employee of the subcontractor (or sub-subcontractor).

In appearance, a COI appears to be an official document that certifies a company carries worker's compensation insurance for its employees. Many times, an insurance company or its agent will issue the COI directly to the contractor (or the subcontractor who contracts with a sub-subcontractor). Often, the COI names the contractor on the COI. The COI states the insurance company has a policy with the subcontractor to cover any work injuries sustained by the subcontractor's employees. The COI may also state the insurer will contact the contractor (or subcontractor who hires a sub-subcontractor) if the policy is cancelled.

The Colorado Department of Insurance declared the COI serves as "evidence" there is insurance in place. Colorado Department of Insurance in Bulletin B-5.21 states the COI is binding, unless it is a forgery or the COI was altered after it was issued. As a general practice, the COI streamlines the process of contracting with subcontractors. The Department of Insurance policy is consistent with the Colorado Workers' Compensation Act and its dictate that the worker's compensation process be speedy and efficient.

The Colorado Supreme Court in *Pinnacol Assurance v. Hoff* understood widespread use of COI's in the construction trade, but determined a COI has no legal effect. Under the ruling, the COI will not make the insurance company issuing the COI liable for a worker's compensation injury if the subcontractor (or sub-subcontractor) did not have a worker's compensation insurance at the time of the work injury.

Workers' Compensation insurance policies are regularly cancelled for a variety of reasons including non-payment of premiums. COI's generally indicate the policy is in effect until a certain date. Unfortunately, many policies are cancelled before the end-date on the COI. Under the *Pinnacol Assurance v. Hoff* case, the insurer has no duty to inform the contractor (or subcontractor with a sub-subcontractor) that the subcontractor's policy was cancelled during the middle of the policy. The cancellation can occur while the subcontractor or sub-subcontractor is actively working on a construction project.

What is the effect of this change in the law? You and your insurer will be liable for the injury of a worker hired by a subcontractor (or sub-subcontractor) under your mandatory worker's compensation insurance policy. You do have a right to attempt collection of your damages from the subcontractor or the sub-subcontractor, but you and your insurer are liable for the injury.

The Supreme Court provided no remedy for how contractors (or subcontractors who hire sub-subcontractors) can protect themselves. You can check each day with the insurance company for your subcontractors to confirm insurance remains in place. But that it impractical for most companies.

One Supreme Court Justice recognized in a dissenting opinion that the courts decision in *Hoff* needs a legislative fix, because COI's are so widely used in Colorado.

In all cases, when you have a subcontractor or sub-subcontractor with a work injury on your project, contact your carrier or attorney immediately. If you end up liable for the injury, early intervention will control the cost of the claim.

If you have any questions, feel free to contact me at 303-575-8096 for any help or advice you need in association with your hiring of subcontractors or sub-subcontractors.

**** Note: The information contained in this document does not convey legal advice of any kind. Please consult your attorney for advice on the application of the law to the specific facts of your case or legal problem.**

Winter Safety Series 2018
Issue 1 | January 18, 2018