

## **My Employer Says There is No Worker's Compensation Insurance What do I do Now?**

This Case Study addresses a problem which comes up surprisingly often – particularly in certain types of businesses like carpentry, roofing, painting, general construction, and restaurants and bars, etc. What happens if your employer doesn't have workers compensation insurance? Where do you go from here?

### **Let's look at two different cases.**

**Case 1.** A bricklayer slipped in mud, wrenching and injuring his back. Shortly after reporting the claim he learned his employer's workers compensation insurance had just been canceled due to nonpayment of premiums. The employer had not realized this had occurred.

**Case 2.** A dishwasher slipped on his restaurant's slick floor. He fell, rupturing a disk in his back. His boss initially offered to pay the medical bills – until the treating doctor ordered an MRI and referred the client to a neurosurgeon. The owner then claimed the dishwasher wasn't on the clock at the time of the accident.

Both of the clients came to us in a crisis situation. Neither were physically capable of working at the time, neither was receiving disability checks, and neither had health insurance.

### **Here's what we did.**

**Case 1.** We spoke with the employer and learned that he had inadvertently underpaid a monthly bill by \$20.00. The insurance company had seized the opportunity to cancel the policy. Given the high rate of injury in the construction industry it is very common for insurance companies to seek any opportunity to drop an insured company. By law they must take a certain number of companies in an assigned risk pool, but they look for any way to get out of these.

The Workers Compensation Act requires contractors to obtain a certificate of insurance for all subcontractors beneath them. If they fail to do this the contractor is liable for workers comp claims against the subcontractor. We quickly pointed this out to the general contractor who could seek reimbursement for the cost of medical treatment and weekly benefits from the employer and, as it turned out, the insurance company. With benefits and medical treatment underway we turned to the insurance company.

Under an obscure legal provision an insurance company must send out cancellation notices by certified mail. Following a hunch we demanded that the insurance company produce the "green card" showing that the employer had signed for the certified mail. They said it was "lost." Next we obtained a printout of the mail log for the day the cancellation letter was supposedly sent. Sure enough – they had not sent any certified mail that day. Facing a certain loss before the Industrial Commission the insurance company settled for a significant sum of money.

**Case 2.** This employer tried every trick in the book to avoid paying this claim. It became clear that he deliberately did not carry insurance. We contacted the North Carolina Attorney General's office and asked for an investigation into this. The penalty for this is a fine of up to \$100 per day, per employee, for each day without insurance. In this instance the Industrial Commission assessed a \$75,000.00 fine on the owner himself. Because the Industrial Commission will reduce the sanctions in order to ensure that there is money to pay for the injured worker's needs we will often use this tactic to put pressure on an employer to do the right thing and begin paying the injured worker's bills.

Sadly, this employer remained defiant. We went to a hearing at which the employer repeated the claim that our client was off the clock at the time of the accident and that there were no witnesses. Fortunately this injured worker had contacted us very quickly – within days of the accident. At our instruction he had quietly made a copy of his timesheet and the employee schedule. With this evidence we trapped the owner in the middle of this lie. Additionally, there had been a single witness. However our client only vaguely knew this co-worker and did not know his last name. By interviewing other co-workers we identified and located this man and obtained testimony that proved our client's version of the events.

#### **Lessons to be applied in *all* cases.**

Three factors led to the successful outcome of these cases. First, whenever possible we maintain a good relationship with the employer. In Case 1 we showed the employer he would benefit by cooperating with us. This gave us access to the information we needed to prove improper cancellation. Second, we were able to utilize little-known statutes to obtain interim benefits as well as putting pressure on the employer to pay our client. We see dozens of cases like these labeled "unwinnable" by lawyers who simply don't have enough experience. Third, early communication between the client and our office let us collect the evidence we needed to win the claims. This is true particularly in Case 2 where we moved very quickly to lock in the evidence before we even knew we needed it. By the time the owner told his employees not to speak to us we already had the evidence sitting in our filing cabinet.