

Workers' Compensation Executive Officers: Include or Exclude?

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One area that has always been confusing is under what circumstances an executive officer can be excluded from coverage under a workers' compensation policy and probably more importantly, whether or not they should be excluded from coverage.

The Workers' Compensation Insurance Rating Bureau (WCIRB) Manual defines executive officers as "those officers of a corporation commonly known and styled as president, any vice president*, secretary, assistant secretary, treasurer or assistant treasurer, and shall include, in addition thereto, any other executive officers enumerated in and empowered by the Charter or any regularly-adopted by-laws of the corporation and who are elected or appointed and empowered by the directors or set forth in the operating agreement of a limited liability company" (Section V.j. of the California Workers' Compensation Uniform Statistical Reporting Plan).

Currently, to be excluded from coverage, an employee must be an officer as described above and secondly one hundred percent (100%) of the stock must be owned by the executive officers and directors of the company. In other words, an officer of a closed corporation (all stock owned by executive officers active in the company) can elect not to be covered by workers' compensation insurance if they own just one share of stock.

This is changing effective January 1, 2017. Assembly Bill 2883 now requires that, in addition to being an executive officer as described above, the officer wanting to be excluded must own at least fifteen percent (15%) of the issued and outstanding stock of the corporation. Interestingly, AB 2883 has eliminated the requirement that 100% of the stock must be held by titled officers or directors in order for a corporate officer or director to be eligible for exclusion. In order to be excluded, the executive officer must execute a written waiver of his or her rights under



the Labor Code stating under penalty of perjury that the person is a qualifying officer or director and is desirous of opting out of workers' compensation. If this affects you, you will receive, directly from your insurance company, the appropriate forms to complete in order to do so.

Of particular concern is that this is effective January 1, 2017 for all policies currently in force. In other words, it does not exempt in-force policies. So even if you are in the middle of a policy term, if you want to remain excluded you will need to execute the waiver form provided by your insurance company. If you do not, then you will be covered by workers' compensation effective January 1, 2017 and charged accordingly.

A general partner of a partnership or a managing member of an LLC is also eligible to elect exclusion from the workers' compensation policy. Note that the fifteen percent (15%) ownership requirement does not apply to general partners and managing members.

Back to the question. Assuming both conditions above are met and the individual has the option to be excluded from workers' compensation coverage, should they opt to be excluded?

The main reason an officer would opt out is to save money. Currently (2017) the maximum payroll for an executive officer is \$122,200 (the minimum is \$48,100). In other words, if an officer earns more than that, the most that will be used in calculating the premium to include

them will be that maximum. Assuming that the officer is in the sales class and the rate for that class is \$1.00 per \$1,000 of payroll, then the cost to include the officer for coverage under the workers' compensation policy would be \$1,222 per year.

A secondary reason is to avoid having an officer's injury adversely affect the company's experience modification. We had an engineering firm whose CEO broke his hip when he slipped while touring a job site. This single accident increased the firm's experience modification from 80% to 118%.

If the decision is made to opt out, it is imperative that the officer's health insurance policy provide 24/7 coverage for them. Most policies do, but in some circumstances, this may not be the case.

Even if they are covered under their own health insurance policy, the workers' compensation policy does provide additional benefits that their health insurance program will not. These include:

1. **Unlimited Health Insurance** benefits for the injury with no deductible.
2. **Disability Coverage** subject to statutory minimums and maximums. The maximum weekly temporary disability benefit is dependent upon the date of injury and varies by wages earned at the time of injury. There is a cap of two years of payments during a five-year period. Partial permanent disability benefits are payable for life and total permanent disability payments can be as high as the weekly temporary disability benefit.
3. **Burial Benefit.** The burial benefit is \$10,000.00.
4. **Death Benefit** for family. The standard death benefit is \$250,000.00 but it can be less for partial dependents (according to financial proof) and can be up to \$320,000.00 for three or more total dependents (according to financial proof). Minor children are entitled to the employee's temporary disability rate until age eighteen (18), regardless of the cap.

Bottom Line: The requirements to exclude executive officers have become more stringent. Regardless, due to the benefits mentioned above and the relatively modest costs to cover the officers, it is recommended that executive officers be covered under the workers' compensation policy. If the decision is made to exclude eligible officers, it is imperative that their health insurance coverage extend to work-related injuries.

*Vice Presidents

There is some confusion over a "vice president" who is not recognized in nor empowered by the "...Charter or regularly-adopted by-laws of the corporation...." Often companies have numerous "vice presidents;" many, if not most, of whom are not "enumerated and empowered by the Charter...."

Unfortunately, in the opinion of most insurance underwriters, unless the vice president is specifically referenced in one of the corporate documents, he/she is not subject to either the maximum payroll cap or the option of being excluded. When dealing with vice presidents that are not empowered by the charter or the by-laws, check with the insurance company to get agreement that they can either be capped or excluded. It is better to agree on this up front rather than find it out at the time of audit.

Officers That Are Active and Unpaid or Inactive and Paid

Confusion often arises out of the treatment of officers that are either active and unpaid, or inactive and paid. This problem is really one of determining the employee's status. In order to qualify for workers' compensation, an individual must be an employee as defined by the California Labor Code.

Under the California Labor Code, a corporate officer not "rendering actual service for pay" would not be held to be an "employee." Other court rulings have held "executive officer remuneration shall not be included provided that such officer, because of age or other reasons, ceases to perform any duties and does not come on the premises, except perhaps to attend directors' meetings" or "that an officer is elected for the value of his name or stock holdings, but has no duties."

Other times, there are officers who are active but not paid. In this case, there is no doubt that they are employees. The manual provides for a minimum payroll charge for active officers, and they should be included in the appropriate classification.

Lastly, there are inactive and unpaid officers. People in this position clearly do not fall under the definition of "employee," and would not be covered for workers' compensation.

LIVE WELL



WORK WELL

Health and wellness tips for your work and life—

Cavnac & Associates

Choosing Medications Wisely

The rising cost of prescription and specialty medications is alarming. The most recent example of how expensive these types of medications can be is the price hike of the life-saving EpiPen, which now costs more than \$600 for one pack of two EpiPens.

If you take prescription medication, using the following strategies can help you become a wiser health care consumer and save you money:

- **Shop around**—Drug prices are not the same at every pharmacy. You may be able to save money by shopping around.
- **Ask about drug substitution**—When your doctor prescribes a drug, ask if a cheaper alternative is available or if an over-the-counter drug will work just as well.
- **Consider using a generic version of your prescription drug**—Generic medications work just as well as brand-name drugs and can cost up to 80 percent less.
- **Look into discount card programs**—Some drugstore chains offer discount prescription cards that provide additional discounts on your prescriptions for a small monthly or annual fee.

This article is intended for informational purposes only and is not intended to be exhaustive, nor should any discussion or opinions be construed as professional advice. Readers should contact a health professional for appropriate advice.

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Check Your Tap Water for Chromium-6

A recent report from the Environmental Working Group (EWG), a nonprofit research organization, revealed that there are higher-than-recommended levels of chromium-6 in the tap water being supplied to two-thirds of all Americans. EWG published an [interactive map](#) that lists its water testing results on a county-by-county basis.

Chromium-6 is a cancer-causing chemical that occurs naturally in the environment and can be produced in high quantities by industrial projects. In addition to being a known carcinogen, chromium-6 can also cause burns, pneumonia and complications during childbirth.

If you live in an area that has high levels of chromium-6, consider purchasing a filter to remove the chemical from your water. The following are the most common filters used:

- **Ion exchange water treatment units**—These units are effective in removing chromium-6. However, they need to be monitored, maintained and replaced fairly frequently.
- **Reverse osmosis filters**—These filters are often more affordable and practical for residential use and are easier to find at local stores. However, they use much more energy, and you must dispose of the filtered materials.

If you aren't sure what filter is best for you, visit [EWG's Water Filter Buying Guide](#) for further guidance.

APPLE CRISP

- 4 medium-sized apples
- ¼ cup quick-cooking oatmeal
- ¼ cup flour
- ½ cup brown sugar
- 1 Tbsp. cinnamon
- ¼ cup margarine, cut into small pieces

PREPARATIONS

1. Preheat the oven to 350 degrees. Grease the bottom and sides of an 8-by-8-inch pan.
2. Core and slice the apples. Spread the sliced apples on the bottom of the prepared pan.
3. In a medium-sized bowl, combine the oatmeal, flour, brown sugar and cinnamon.
4. Using a knife, cut the margarine into the mixture until it looks like small crumbs.
5. Sprinkle the crumb mixture over the apples.
6. Bake in the oven for 20-30 minutes until the apples are tender and bubbly. Serve warm.

Makes: 8 servings

Nutritional Information (per serving)

Total Calories	170
Total Fat	6 g
Protein	1 g
Carbohydrates	28 g
Dietary Fiber	2 g
Saturated Fat	2 g
Sodium	50 mg

Source: USDA



Important Updates: 2016 Flu Vaccine

As the 2016-2017 flu season approaches, now is a great time to get vaccinated against the flu. The U.S. Centers for Disease Control and Prevention (CDC) recommends that everyone 6 months of age and older get a flu vaccine.

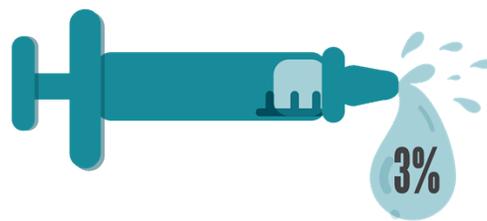
Unlike their recommendations during past flu seasons, the CDC and the American Academy of Pediatrics (AAP) are **not** recommending the nasal spray vaccine, FluMist, for the 2016-2017 season due to concerns over its effectiveness, especially in children. The CDC and AAP are now only recommending the injectable flu vaccine.

Some flu shots protect against three flu viruses while others protect against four viruses. Consult your physician to determine which shot is best for you. If you don't have a regular doctor, you can get a flu vaccine at a local health department, pharmacy or urgent care clinic.

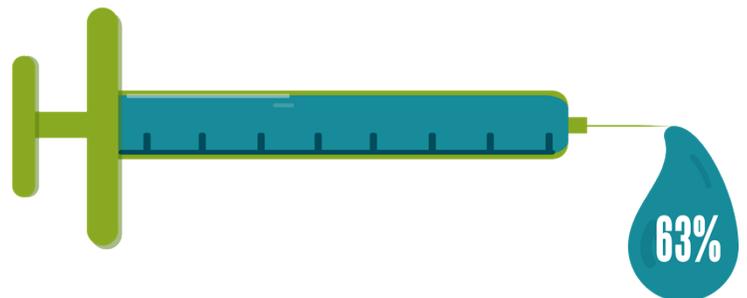
Getting an annual flu vaccine is the first and, arguably, the best way to protect your family during the flu season. For more information on the 2016-2017 vaccine, click [here](#).

Effectiveness of Flu Vaccines

FluMist Nasal Vaccine



Injectable Flu Vaccine



Spotlight On



Cavnagac & Associates is proud to support local and non-profit civic organizations, including Alpha Project:



The mission of the Alpha Project is to empower individuals, families, and communities by providing work, recovery and support services to people who are motivated to change their lives and achieve self-sufficiency. The agency's many programs are available to all persons in need regardless of race, creed, color, ethnicity, national origin, religion, gender, or sexual orientation.

Alpha Project strives not to manage homelessness, but rather to end it for its clients by offering jobs not handouts, respect not pity and empowerment not control. We provide the homeless with the tools they need to be the very best they can be.

Each program offered by the Alpha Project focuses on assisting participants to attain their own optimal level of independence. For most of our program participants, successful completion of our programs will mean complete and permanent independence through education, employment, sobriety, and stability. For those clients with special needs, our programs maximize their own potential and supports as much independence as possible. All of our clients regardless of their history are encouraged, supported, and assisted in reaching their maximum potential with dignity and respect.

*For more information about Alpha Project,
visit www.alphaproject.org*