

# Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 10/2002 – “Insurance Requirements in a Hard Insurance Market”

October, 2002

## Insurance Requirements in a Hard Insurance Market

If you are in the construction business in Southern California, you already know that the insurance industry is in a crisis. General liability rates are increasing dramatically, and some higher risk contractors may not be able to buy insurance at all.

At the same time, coverage in the typical commercial general liability policy is becoming more restrictive, and “additional insured” endorsements, which were once commonplace, are now becoming difficult to obtain from sub-contractors. This has caused some developers and general contractors to rethink their sub-contractor insurance requirements.

### The Problem:

**Sub-contractors are not able to provide the preferred form of additional insured endorsements that their clients require.**

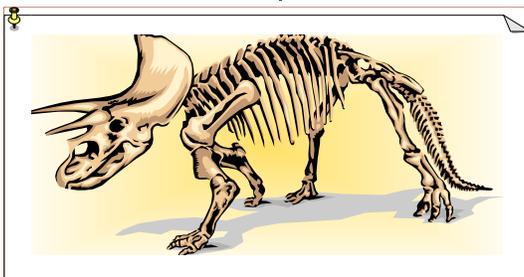
The preferred Additional Insured endorsement, Form CG 20 10 (11/85), is published by the Insurance Services Office (ISO). This form is commonly referred to as the “20 10 11 85.” Basically, this form provides additional insured status for any liability (subject to the policy’s terms and conditions) arising out of the named insured’s operations. This would include liability during the construction process (known as “premises and operations”) as well as liability after the work is completed (known as “completed operations”).

Subsequent additions of the CG 20 10 restricted the additional insured’s status to “premises and op-

erations” or to “ongoing operations” only. In other words, if liability arose during the course of the named insured’s operations, additional insured status would apply. However, if the project was completed, additional insured status would not apply.

Most sophisticated owners, developers and general contractors require their sub-contractors to provide the CG 20 10 (11/85) Additional Insured Endorsement. But, many insurance companies will no longer allow it, and it is speculated that this endorsement may become unavailable anywhere.

**Insurance Requirements** — Continued on page 2



**Additional Insured Endorsement  
20 10 (11/85)**

Insurance Requirements in a Hard Market.....	1-3
New Employee Benefits Department Opens.....	2
Work Comp— Steps to Take in the Event of a Claim .....	3-5
Work Comp— Return to Work Programs.....	5-6
Work Comp—Early Return to Work Guidelines .....	6

Published by

**Cavnac & Associates**

INSURANCE BROKERS

License No. OA99520

1230 Columbia Street, Suite 850  
San Diego, CA 92101-3547

✧ Phone 619-234-6848  
✧ Fax 619-234-8601  
✧ Web Site [www.cavnac.com](http://www.cavnac.com)

If you are the one who requires the CG 20 10 (11/85) (an owner, developer, general contractor, etc.) or the one who has to provide it (usually a sub-contractor), what can you do?

## Reality

If you are requiring coverage, you may not be able to get additional insured status that extends to completed operations. If you have to provide additional insured status that extends to completed operations, you may not be able to do so. Furthermore, you will begin to see manuscripted additional insured endorsements that not only do not extend to completed operations, but also make it clear that they will not pick up the additional insured's sole negligence. In certain cases, the ISO CG2010 (any edition) has been held to pick up the additional insured's sole negligence if the liability arose out of the work being done by the sub-contractor.

If you are the one requiring the 20 10 11 85, you're going to have to decide whether or not the inability to provide this endorsement by a sub-contractor is a deal breaker. If it is, you may still be

able to find some sub-contractors who can provide the preferred form.

If the availability of this form disappears entirely, or if the contractors you prefer to work with can't provide it, you will be forced to rely on the more limited protection provided by alternate endorsements. You will also want to make certain that you carefully review any additional insured endorsements that don't meet your typical requirements. Your insurance broker should be able to help you with this.

If you are a contractor who can't provide the required additional insured endorsement, our advice is to advise your clients now. Don't wait until you have to submit a certificate, then let your clients find out on their own. Explain the problem with the insurance marketplace and the general unavailability of the preferred endorsement. Provide a copy of an endorsement you can provide for their review and approval in advance.

If you are the one requiring additional insured status, don't overlook your indemnity agreement. There are two ways for you to get coverage under a sub-contractor's general liability policy: one is with additional insured status, and the other is through the contractual coverage provided by the general liability policy.

ISO's general liability policy (Form CG 00 01) provides what is commonly known as "broad form contractual liability" coverage. It allows the named insured to assume the **tort** liability of another party. In other words, if the owner of a project is 99% at fault and the contractor is 1% at fault, and the contractor agreed to hold the owner harmless from any and all liability excepting the owner's sole negligence, then in this example the contractor's general liability policy would cover any and all damages (100% of damages).

Note that from the owner's or general contractor's perspective, it is critical that any sub-contractors working for you provide you with contractual liability coverage equivalent to that included in the ISO Form CG 00 01. This should be part of your insurance specifications.

The restriction of coverage for your sub-contractors makes it even more important for you to review your own insurance program. After all, if you can't transfer the risk to your sub-contractor, it remains with you. Thoroughly review all the exclu-

## **Cavignac & Associates Opens Employee Benefits Department**

Cavignac & Associates proudly announces the formation of its new Employee Benefits Department, which specializes in providing health insurance and related products to San Diego's business community.

Patrick Casinelli, a 13 year veteran of the employee benefits business, heads our new department.

If you need medical, dental, short or long-term disability, life insurance, vision care, chiropractic and acupuncture, 401(k) Pensions/ Executive Compensation/ Deferred Compensation or Cafeteria/ Flexible Spending Plans, or if you just want to discuss your options, contact Patrick Casinelli:

**Direct Line:** 619-744-0563

**E-Mail:** [pcasinelli@cavignac.com](mailto:pcasinelli@cavignac.com)

**Fax:** 619-234-8601

or visit our website at [www.cavignac.com](http://www.cavignac.com)

sions as well as the sub-contractor warranties to make certain you understand your coverage and that you are complying with the warranties.

## Summary

The CG 20 10 (11/85) additional insured endorsement, for years the preferred form for additional insured status, is becoming difficult to obtain, and may soon disappear all together. Owners, developers, and contractors need to reconsider their sub-contractor insurance requirements and make changes when necessary.

Even if you can't get additional insured status for completed operations, you can still get coverage from the sub-contractors policy with a well written indemnity agreement.

Sub-contractors need to alert their clients regarding their insurance programs, and they should get their additional insured wording pre-approved. Owners, developers and general contractors need to understand their own coverage, and any sub-contractor warranties that might apply.

The construction insurance marketplace is in terrible shape. Increased pricing and dwindling coverage will force all parties in the construction process to reevaluate and rethink the way they are conducting business. ✨

---

**Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

---

# Workers Compensation: Steps to Take in the Event of a Claim

The steps taken immediately after an employee accident are often more important than all of the other actions taken during the remaining life of the claim.

During this time, the employer can earn the trust of legitimately injured employees, which could prevent unnecessary attorney involvement and enable the employer to help the employee obtain the most effective medical care.

If the claim is not legitimate, this is the time period during which the employer has the



best opportunity to gather evidence that will help defend the claim and avoid paying benefits that are not truly owed.

Regardless of whether or not the goal is to start a positive relationship with an injured worker, or to build a case against a worker with a fraudulent claim, it is important to have a system in place so none of the steps are missed.

## Steps to Take

- 1. Provide first aid** when necessary if trained staff is available. You should have a relationship with a specified medical provider and preferably a specific physician at that clinic (as the employer, you generally control the medical care within the first 30 days after an injury unless your employees have pre-designated their own

**Steps in Event of Claim**— *Continued from page 3*

physicians). You should consult the medical provider if there are any questions at all about the injury.

Recognize that minor injuries can become major injuries if not properly treated. You also need to encourage your employees to report injuries to you or their supervisor as soon as possible.

- 2. Take or send the injured worker to your preferred medical provider.** As previously mentioned, the employer generally controls medical treatment for 30 days after an injury is reported.

Everyone in your office should know where the preferred medical provider is located, and all employee injuries when possible should be treated with the selected clinic.

If your operation requires your employees to be in the field at different locations (construction risks, as an example) each supervisor should have a list of preferred medical providers closest to their current project.

- 3. Equipment related injuries** – If equipment malfunction contributed to the injury, prevent its further use until full repair and a safety check has been completed. Don't hesitate to consult with your workers compensations loss control department and/or the original equipment manufacturer.
- 4. Investigate** the circumstances of the injury and **prepare an "Employers Report of Occupational Injury or Illness" (Form 5020).** The law requires you to send the Employers Report of Occupational Injury or Illness form to your insurance company within 5 days after you have knowledge of the injury. We however, recommend that you report it with in 24 hours if possible. This will assist with the prompt delivery of benefits.

Note that some insurance companies will allow you to complete this form either online or via an 800 number. If you are uncertain as to whether or not this is an option, contact your insurance agent, who will be able to help you.

It is also important that you contact your insurance companies claims adjuster if you think any injuries may be suspect (i.e. fraudulent), or if it is a serious injury or fatality.

- 5. Promptly return the "Employers Report of Oc-**

**cupational Injury or Illness"** to your insurance company. An employers report should be sent even when a claim seems extremely doubtful.

Sending and employers report does not constitute an admission of liability. However, delays in the reporting might make it more difficult to investigate the validity of a claim and control costs.

The report should include a complete explanation of the injury and the circumstances surrounding the accident. If you think the injury could be classified as a first aid claim, let the insurance company know at the time you report it.

As a side note, don't wait to hear from the doctor before reporting a claim. The doctor will report his findings directly to your insurance company.

- 6. Provide the employee an "Employee Claim for Workers Compensation Benefits" (DWC41)** – This must be provided to the employee within one working day of receiving notice of a job related injury. If possible, you should have your employee complete and return the form to you immediately (on the spot). You should send the original of the employee claim form directly to your insurance company, keep a copy for yourself and also provide a copy to the injured worker.
- 7. Doctor's note** – The doctor should give your employee a notice stating when he or she can return to work. Occasionally, the doctor will recommend light or modified work. Ideally you will have a return to work program (see "Workers Compensation: Providing an Effec-

**Steps in Event of Claim**— *Continued on page 5*

**Visit us on the Web!**



**[www.cavnac.com](http://www.cavnac.com)**

**Steps in Event of Claim**—Continued from page 4

tive Return to Work Program” in this newsletter), which makes available modified work that might be appropriate for the injured worker. It has been proven that modified work can speed recovery to full duty and reduce long-term workers compensation expenses.

- 8. Stay in touch with your employees** – Injured employees are often confused about the workers compensations process. They don’t understand the benefits, and they may even feel that their jobs are in jeopardy. It is imperative to stay in touch with injured employees, explain their benefits, and address any questions or con-

cerns that they might have. A good practice is to have your company owner or appropriate executive officer contact injured employees the day they are hurt.

## Summary

The 48 hours immediately following an employee injury are critical when it comes to managing and controlling your workers compensation costs. In the event of employee injury, it is imperative that everyone in your firm responsible for employees be familiar with the process of how to report, evaluate and monitor a workers compensations claim.✂

---

# Workers Compensation: Providing an Effective Return to Work Program

As workers compensations costs continue to escalate, employers are constantly looking for ways to manage and control their claims. Ultimately, claims determine workers compensation premiums, and the only way to control premiums is to reduce claims.

One claim reduction technique is an effective “Return to Work Program.” Return to Work Programs basically involve taking injured workers and temporarily placing them in job assignments (different from their normal work) that accommodate their work related injuries. Return to Work Programs have three basic objectives:

- **To Facilitate Recovery and Promote Rehabilitation** – In general, keeping an employee at work and in the work routine increases the chance of a successful return to full employment.
- **To Prevent Abuse of the Workers Compensation System** – The most common abuse of workers compensation is when employees claim injuries to justify a couple of days off. If employers consistently return employees to

work after a work-related injury, it conveys a sense of control and eliminates the incentive to claim injuries to take some time off from work.

- **To Reduce the Cost of Temporary Disability** – An employer can reduce the amount of temporary disability it pays by putting an employee back to work.

The alternative work assignment might involve modifying an employee’s existing responsibilities to adjust for the temporary disability, making available an existing job currently performed at the company, or specifically designing a job around the injured employee’s restrictions.

## The Basics

Before writing your Return to Work Program, you need to make some major policy decisions. The first decision deals with the **maximum length of the transitional work** (alternate duty) assignment. This is typically somewhere between 60 and 120 days.

**Return to Work Program**—Continued on page 6

Setting a time frame accomplishes several things. First of all, it forces the employer to monitor and manage the claim within the agreed upon time frame. Secondly, it is clear to the employee that the alternate duties are not permanent, but transitional, and that the employee only has a set number of days to work him or herself back into a regular full time job.

The second issue an employer has to deal with is **those injured employees that are not candidates for alternative work**, or who are unable to return to a permanent job. Usually, the best alternative and sometimes the only alternative is vocational rehabilitation.

The employer must also **communicate the purpose of its Return to Work Program** to both management and its employees. Managers and supervisors need to understand the goals of the Return to Work Program (mentioned above) and employees need to understand the rehabilitative benefits of alternate work, the temporary nature of such assignments and alternatives for employees who cannot work their way back into a regular job.

Finally, the employer must be in a position to communicate its alternative duty assignments to a treating physician other than the company-designated provider (it is assumed that the employer has communicated this to their designated provider). A pamphlet or letter could be prepared in advance that the employee can take to the doctor outlining the available assignments so that the doctor can determine if the injured employee is a candidate for these positions.

Some companies have excellent transitional work assignments, others don't. Regardless, transitional work should not be punitive or debasing in any way.

The section to the right shows a straightforward early return to work policy statement. If you need additional assistance in setting up a Return to Work Program, ask your insurance broker and workers compensation company to assist you.✂

## **Early Return-to-Work Guidelines**

The purpose of our “Early Return to Work Program” is to minimize the impact and cost of disabling injuries as they pertain to our employees and the company. With this in mind, we have developed alternative or transitional job requirements that can be offered when appropriate to injured employees on a temporary basis.

Subsequent to a work related injury and based on the physician's evaluation of the injured employee's capabilities, it will be determined if an alternative job would be an option.

A transitional job offer will only be made available when the work benefits the company. The transitional job, if offered, will end with the date the employee receives a regular release, and may be ended at any time if there is no longer a need for the transitional work.

Each case will be assessed individually based on need. Transitional work may not be implemented in every lost time claim. Wages will not necessarily be the same as that of the regular job, and in some cases employees may be eligible for a wage supplement from our workers compensation insurance company.

On-the-job injuries and occupational diseases will be evaluated by a team consisting of the injured employee, his or her supervisor, the company owners, the insurance company and the injured employee's physician. Alternative or transitional work responsibilities should be beneficial to both the employee and the company.✂