



Workers' Compensation: Know Your Client Geography

The more complicated the coverage, the greater the possibility a mistake can potentially result in an E&O claim against the agent. A big culprit? Failure to obtain coverage for operations in states other than the insurance customer's home state of operation. This is due to several common errors including the agent's failure to understand the customer's business activity and the policy's territorial coverage.

Fortunately, an agent can avoid these errors by taking some basic precautions up front. When a retail customer requests workers' compensation coverage, the agent should become well acquainted with the insured's business activities. This is not only good practice to determine which class of work the customer qualifies for, but also to discover details about where the customer has workers. Further, the agent should repeat the inquiry at each renewal, or more frequently if the agent suspects that the customer's business activities may have changed.

The agent should determine whether, and where, the customer has fixed business locations (such as storefronts or jobsites) and if these sites ever change. It is also important to know if the customer even occasionally sends its employees to remote job sites (as is the case in many service trades). It may be necessary to ask the customer to make an internal inventory of its business activities and the locations where work occurs. Activities that should give rise to additional questions and investigation of the customer's business locations include over-the-road trucking, farming operations (especially harvesting, hauling or crop treatment operations that "follow the harvest"), gas and oil operations, construction, sales and service operations and maritime operations.

It is also important to determine where the customer gets employees and where they reside because workers' compensation coverage is state specific. Many states require coverage for many or all employers. Thus, there are a number of carriers that are limited in who they can insure and the geographic location of the work they can insure due to their status as quasi-governmental entities or specific charters. Other carriers may be limited in terms of capacity or risk tolerance for certain classes of business in various locations. Some policy forms may cover employees hired in the home state of the business even when they work outside the home state. However, those same policies may exclude coverage for an employee working away from the home state when hired outside the home state even when he works alongside a covered home state co-employee. The residence of the employee also can be a factor in some coverage clauses.

To ascertain the geographic limits of the policy sold, agents should check the actual wording and not assume the contents are the same as the last policy. The capacity of each workers' compensation carrier is variable and fluid; don't assume that a policy covers work in a particular location without verifying it against the actual policy language. Also, the terminology of the "all states" endorsement can be misleading to the uninitiated. Even the broadest "all states" endorsement may have exclusions for the monopolistic workers' compensation states (where the state is the only or primary carrier) or some of the high-risk territories. While there are policy forms available that truly cover all operations in the continental United States, they are the exception and not the rule.

Inquire about the territorial limits of the policy and then follow up by reading the policy delivered. Make sure that the policy not only matches what the agency thought it was getting for its customer, but also that the policy's territorial coverage matches the customer's territorial operations.

Fortunately, a small investment of time at the outset of the customer relationship and then again at renewal can dramatically reduce the likelihood of these errors. ☐

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Workers' Comp Case Study

Employer ACME contacted a retail agent about purchasing workers' compensation coverage in Texas. ACME described its operations as farming related. After some idle conversation, the agent learned that ACME owned and operated cotton harvesting equipment and sold its services to farmers as it followed the cotton harvest north. The coverage was placed with a carrier that provided coverage for the operations in Texas. Several years later, a claim was turned in after an ACME-owned truck operated by two of its employees wrecked in southern Missouri, injuring both employees. To the surprise of both the agent and ACME, the carrier denied the claim to one employee and paid the other. The difference between them? The driver was an ACME employee who was hired, lived and employed in Texas. He was in Missouri to supervise hauling the cotton to market. Over the few years since the policy inception, ACME had expanded its operations and added a hub on the other end of the cotton harvest in southern Missouri. The passenger was hired on-site in southern Missouri and had no ties to Texas. The policy at issue covered Texas employees who worked in other states including Missouri, but not employees hired in other states for their work in states other than Texas.

Had the agent investigated ACME's business operations at the policy's inception, he may have discovered that the cotton harvest that ACME followed routinely took ACME into Arkansas and southern Missouri. Also, the renewal of the policy came and went each year and while the agents asked the appropriate payroll questions, there were no discussions of new operations or where employees were hired. As a result, the agent was left with both an unhappy customer and an E&O claim.

—J.D.