

## CHAPTER 112. SCOPE OF LIABILITY FOR COMPENSATION

### SUBCHAPTER B. - APPLICATION TO GENERAL CONTRACTOR/SUBCONTRACTOR AND MOTOR CARRIER/OWNER OPERATOR

#### §112.101. Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors.

- (a) An agreement between a general contractor and a subcontractor made in accordance with the Texas Labor Code, §406.123(a),(d),(e) or (l) shall:
- (1) be in writing;
  - (2) state that the subcontractor and the subcontractor's employees are employees of the general contractor for the sole purpose of workers' compensation coverage;
  - (3) indicate whether the general contractor will make a deduction for the premiums;
  - (4) specify whether this is a blanket agreement or if it applies to a specific job location and, if so, list the location;
  - (5) contain the signatures of both parties;
  - (6) indicate the date the agreement was made, the term the agreement will be effective, and estimated number of workers affected by the agreement.
- (b) The workers' compensation insurance coverage provided by the general contractor under the agreement shall take effect no sooner than the date on which the agreement was executed and deductions for the premiums shall not be made for coverage provided prior to that date.
- (c) If a person who is covered by a subcontractor agreement signed under this section is found to be an employee of the general contractor, the person:
- (1) is covered under the general contractor's workers' compensation policy; and
  - (2) shall receive a refund from the general contractor for all amounts improperly deducted as premium.
- (d) The general contractor shall maintain the original and file a legible copy of the agreement with the general contractor's workers' compensation insurance carrier and the Commission within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. If a general contractor and subcontractor enter into a written agreement in which the subcontractor assumes the responsibilities of an employer, as provided in the Texas Labor Code, §406.122(b) the general contractor shall provide a copy of the agreement to its carrier within 10 days of execution. After January 1, 1993, a general contractor who is a certified self-insurer shall file a copy of the agreement with the Division of Self-Insurance Regulation within 10 days of the date of execution. Filing shall be made in the form and manner prescribed by the Commission.
- (e) The general contractor shall be required to give the subcontractor's employees the notice required under the Texas Labor Code, §406.005 when such an agreement is made.

- (f) If a subcontractor makes an agreement in accordance with this rule, an employee of the subcontractor may elect to retain his common law rights as provided by the Texas Labor Code, §406.034.

*The provisions of this §112.101 adopted to be effective February 27, 1991, 16 TexReg 985; amended to be effective March 13, 2000, 25 TexReg 2082*

**§112.102. Agreements between Motor Carriers and Owner Operators.**

- (a) A motor carrier and an owner operator may enter into an agreement which requires the owner operator to assume the responsibilities of an employer for the performance of work.
- (b) An agreement made under subsection (a) of this section shall be made at or before the time the contract for the work is made and shall:
  - (1) be in writing;
  - (2) state that the owner operator assumes the responsibilities of an employer for the performance of work;
  - (3) contain the signatures of both parties;
  - (4) indicate the date the agreement was made, the term the agreement will be effective, the estimated number of workers affected by the agreement, the federal tax identification number of the parties; and
  - (5) be provided to the insurance carrier of the motor carrier within 10 days of execution.
- (c) A motor carrier and an owner operator may enter into an agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the owner operator's employees.
- (d) An agreement made under subsection (c) of this section shall be made at or before the time the contract for the work is made and shall:
  - (1) be in writing;
  - (2) indicate whether the motor carrier will make a deduction for the premiums;
  - (3) contain the signatures of both parties;
  - (4) indicate the date the agreement was made, the term the agreement will be effective, the estimated number of workers affected by the agreement, the federal tax identification number of the parties; and
  - (5) be filed with the commission in Austin and the insurance carrier of the motor carrier within 10 days of execution.
- (e) The workers' compensation insurance coverage provided by the motor carrier under the agreement shall take effect no sooner than the date on which the agreement was executed and deductions for the premiums shall not be made for coverage provided prior to that date.
- (f) The motor carrier shall be required to give the owner operator's employees the notice required under the Texas Workers' Compensation Act, §406.005, when such an agreement is made.

*The provisions of this §112.102 adopted to be effective February 27, 1991, 16 TexReg 985; amended to be effective June 9, 2005 30 TexReg 3230.*

## **SUBCHAPTER C. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS**

### **§112.200. Definition of Residential Structures.**

For purposes of the Texas Workers' Compensation Act (the Act), §406.142, "residential structures" are buildings used as a family dwelling or multi-family dwelling, limited to a single-family residence, a duplex, a triplex, and a quadraplex. All other types of structures used for living purposes shall be considered commercial structures, and shall only be included within the scope of the Act, §406.142, if they do not exceed three stories or 20,000 square feet.

*The provisions of this §112.200 adopted to be effective June 3, 1991, 16 TexReg 2830; amended to be effective June 9, 2005 30 TexReg 3230.*

### **§112.201. Agreement To Establish Employer-Employee Relationship for Certain Building and Construction Workers.**

- (a) This section applies only to building and construction projects as provided by the Texas Labor Code, §406.142.
- (b) An independent contractor and a hiring contractor, as defined in the Texas Labor Code, §406.141, may enter into a written agreement:
  - (1) to allow the hiring contractor to withhold the cost of workers' compensation insurance from the contract price; and
  - (2) to stipulate that, for the sole purpose of providing workers' compensation insurance, the hiring contractor will be the employer of the independent contractor and the independent contractor's employees.
- (c) An agreement made under subsection (b) of this section shall be filed in the form and manner prescribed by the commission.
- (d) The agreement shall:
  - (1) be in writing;
  - (2) indicate whether the hiring contractor will make a deduction for the premiums;
  - (3) specify that the hiring contractor will be the employer of the independent contractor and the independent contractor's employees for the sole purpose of providing workers' compensation insurance;
  - (4) specify the location of the job sites subject to the contract and the agreement;
  - (5) contain the signatures of both parties; and
  - (6) indicate the date the agreement was made, the term the agreement will be effective, and the estimated number of employees affected by the agreement.
- (e) The workers' compensation insurance coverage provided by the hiring contractor under the agreement shall take effect no sooner than the date on which the agreement was executed and deductions for the premiums shall not be made for coverage provided prior to that date.

- (f) If a person who is covered by an independent contractor agreement signed under this section is found to be an employee of the hiring contractor, the person:
  - (1) is covered under the hiring contractor's workers' compensation policy; and
  - (2) shall receive a refund from the hiring contractor for all amounts improperly deducted as premium.
- (g) The hiring contractor shall file a legible copy of the agreement with the commission, in the form and manner prescribed by the Commission. The hiring contractor must also maintain the original and file a legible copy of the agreement with the hiring contractor's workers' compensation insurance carrier within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete.
- (h) A hiring contractor electing to provide workers' compensation insurance coverage through an agreement under subsection (b) of this section shall be deemed to have accepted the rights and responsibilities of an employer imposed under the Act as of the effective date of the workers' compensation insurance coverage.
- (i) If an independent contractor makes an agreement under this rule, the employee of the independent contractor may elect to retain his common law rights as provided by the Texas Labor Code, §406.034.
- (j) For purposes of the Texas Labor Code, §406.142, 20,000 square feet is measured on the outside perimeter of the structure.

*The provisions of this §112.201 adopted to be effective February 26, 1991, 16 TexReg 896; amended to be effective March 13, 2000, 25 TexReg 2082*

**§112.202. Joint Agreement To Affirm Independent Relationship for Certain Building and Construction Workers.**

- (a) An independent subcontractor and a hiring contractor may enter into an agreement which states that the subcontractor is an independent contractor and is not an employee of the hiring contractor.
- (b) The agreement shall be filed in the form and manner prescribed by the Commission and shall:
  - (1) be in writing;
  - (2) state that the subcontractor meets the qualifications of an independent contractor under the Texas Labor Code, §406.141(2);
  - (3) state that the subcontractor is an independent contractor and is not an employee of the hiring contractor;
  - (4) contain the signatures of both parties;
  - (5) indicate the date the agreement was made; and
  - (6) state that: "Once this agreement is signed, the subcontractor and the subcontractor's employees shall not be entitled to workers' compensation coverage from the hiring contractor unless a subsequent written agreement is executed, and filed according to Commission rules, expressly stating that this agreement does not apply."
- (c) If a person who is covered by an independent contractor agreement signed under this section is found to be an employee of the hiring contractor, the person is covered under the hiring contractor's workers' compensation policy.

- (d) The hiring contractor shall maintain the original and file a legible copy of the agreement with the Commission in the form and manner prescribed by the Commission. The hiring contractor must also file a legible copy of the agreement with the hiring contractor's workers' compensation insurance carrier, if any, within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete.
- (e) If the agreement is made in compliance with subsections (a) through (d) of this section and a separate agreement has not been made in accordance with §112.201 of this title (relating to Agreement to Establish Employer-Employee Relationship for Certain Building and Construction Workers):
  - (1) the subcontractor and the subcontractor's employees shall not be entitled to workers' compensation coverage from the hiring contractor; and
  - (2) the hiring contractor's workers' compensation insurance carrier shall not require premiums to be paid by the hiring contractor for coverage of the independent contractor or the independent contractor's employees, helpers, or subcontractors.
- (f) All hiring contracts executed by the parties during the year after an agreement under subsection (a) of this section is filed are subject to that agreement, unless such contract expressly states that the agreement does not apply.

*The provisions of this §112.202 adopted to be effective February 26, 1991, 16 TexReg 896; amended to be effective March 13, 2000, 25 TexReg 2082*

**§112.203 Exception to Application of Agreement To Affirm Independent Relationship for Certain Building and Construction Workers.**

- (a) If a subsequent hiring agreement is made that expressly states that the joint statement made under §112.202 of this title (relating to Joint Agreement to Affirm Independent Relationship of Certain Building and Construction Workers) does not apply to that hiring agreement, the hiring contractor shall maintain the original and file a legible copy of the agreement with the Commission and the hiring contractor's insurance carrier. Nothing in this section otherwise nullifies the joint statement as it applies to other hiring agreements made during the term of the joint statement.
- (b) The notification shall be filed in the form and manner prescribed by the Commission and shall:
  - (1) specify the date the agreement to affirm an independent relationship was made;
  - (2) specify the parties to the agreement and the location of the job site(s);
  - (3) specify the date this agreement was made;
  - (4) contain the signatures of both parties.
- (c) If a person who is covered by an independent contractor agreement signed under this section is found to be an employee of the hiring contractor, the person:
  - (1) is covered under the hiring contractor's workers' compensation policy;
  - (2) shall receive a refund from the hiring contractor for all amounts improperly deducted as premium.

- (d) The notice shall be provided in the form and manner prescribed by the Commission, no later than 10 days from the date the subsequent hiring agreement was executed. An agreement is not considered filed if it is illegible or incomplete.

*The provisions of this §112.203 adopted to be effective February 26, 1991, 16 TexReg 896; amended to be effective March 13, 2000, 25 TexReg 2082.*

## **SUBCHAPTER D. APPLICATION TO FARM OR RANCH EMPLOYEES**

### **§112.301 Labor Agent's Notification of Coverage.**

- (a) A labor agent shall notify each person with whom the labor agent contracts to provide the services of migrant and seasonal workers whether or not the labor agent has workers' compensation insurance coverage.
- (b) The notification shall be in writing and shall be given at the time the contract for the services of the migrant or seasonal workers is made. The notification shall be signed and dated by both parties and each party shall retain a copy of the notice.
- (c) If the labor agent does have workers' compensation insurance coverage, the labor agent shall present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts to provide the services of migrant and seasonal workers. The evidence of coverage shall be in writing and shall be presented at the time the notification of coverage is made. Each party shall retain a copy of the evidence of coverage with the copy of the notice. A certificate of insurance shall be considered adequate evidence of coverage.
- (d) The notice and evidence of coverage, if applicable, shall be given each time a labor agent makes a contract with a person to provide migrant or seasonal workers. Any notice and evidence of coverage provided for a prior contract between the parties shall be considered insufficient to meet the requirements of this section.
- (e) If coverage is terminated during the period of the contract for employment, the labor agent shall notify:
  - (1) the person with whom the agent contracted to provide the services of migrant and seasonal workers;  
and
  - (2) the migrant and seasonal workers affected that the workers' compensation insurance coverage has been terminated.

*The provisions of this §112.301 adopted to be effective February 26, 1991, 16 TexReg 899.*

**THIS PAGE INTENTIONALLY LEFT BLANK**



## SUBCHAPTER E. PROFESSIONAL ATHLETES ELECTION OF COVERAGE

### §112.401 Election of Coverage by Certain Professional Athletes.

- (a) A professional athlete employed by a franchise with workers' compensation insurance coverage and subject to the Texas Labor Code, §406.095, shall elect to receive either the benefits available under the Act or the equivalent benefits available under the athlete's contract or collective bargaining agreement. The election shall be made not later than the 15th day after the athlete sustains an injury in the course and scope of employment. If the athlete fails to make an election, the athlete will be presumed to have elected the option which provides the highest benefits.
- (b) When a contract is signed by a professional athlete, the employer shall give the athlete a copy of the following statement: "(Name of employer) has workers' compensation coverage from (name of insurance carrier). If the benefits available to you under your contract and any applicable collective bargaining agreement are equivalent to or greater than those available to you under the Texas Labor Code, §406.095 you are required to elect whether to receive the benefits available to you under the Act or the benefits available to you under your contract and any applicable collective bargaining agreement. You must make this election no later than 15 days after sustaining an injury. If you elect to receive the benefits available to you under your contract and any applicable collective bargaining agreement, you cannot obtain workers' compensation income or medical benefits if you are injured. You can get more information about your workers' compensation rights and the benefits available to you under the Act from any office of the Texas Workers' Compensation Commission, or by calling 1-800-252-7031."
- (c) The election shall be in writing and shall:
  - (1) indicate the date of the injury for which the election is being made;
  - (2) indicate whether the athlete elects to receive the benefits available under the Act or the benefits provided under the contract or agreement; and
  - (3) be signed by the athlete and the employer.
- (d) If the athlete elects to receive the benefits available under the Act, a legible copy of the election shall be provided to the Commission in the form and manner prescribed by the Commission, within 10 days of the date of execution. A copy must also be provided to the franchise's workers' compensation insurance carrier within 10 days of the date of execution. The franchise shall maintain the original election and provide a copy to the athlete.
- (e) If the athlete elects to receive the benefits available under the contract and any agreement, the election shall be provided to the franchise's workers' compensation insurance carrier by personal delivery or registered or certified mail within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Both the athlete and the franchise shall keep a copy of the election.
- (f) An election made under this section is irrevocable and binding on the athlete and the athlete's legal beneficiaries for a compensable injury incurred on the date specified in the election.

*The provisions of this §112.401 adopted to be effective October 1, 1992, 17 TexReg 6362; amended to be effective March 13, 2000, 25 TexReg 2082.*

### §112.402 Determination of Equivalent Benefits for Professional Athletes.

- (a) Medical care available to a professional athlete subject to the Texas Workers' Compensation Act (the Act), Texas Labor Code, §406.095, is equal to or greater than medical benefits under the Act if:

- (1) the athlete is entitled to all health care reasonably required by the nature of the work-related injury as and when needed, including all health care that:
    - (A) cures or relieves the effects naturally resulting from the work-related injury;
    - (B) promotes recovery; or
    - (C) enhances the ability of the employee to return to or retain employment; and
  - (2) the employer's liability for health care is not limited or terminated in any way by the contract or collective bargaining agreement.
- (b) When the athlete is not eligible for lifetime income benefits or when the athlete's legal beneficiaries are not eligible for death benefits under the Act, weekly benefits available to a professional athlete subject to the Act, §406.095, are equal to or greater than the income benefits provided under the Act if the total amount of the payments provided for in the contract or collective bargaining agreement is equal to or greater than the maximum weekly benefit available under the Act multiplied by 104.
- (c) When the athlete is entitled to lifetime income benefits under the Act, weekly benefits available to a professional athlete subject to the Act, §406.095, are equal to or greater than the income benefits provided under the Act if equal to or greater than the maximum weekly benefit available under the Act.
- (d) When the athlete's legal beneficiaries are entitled to death benefits under the Act, weekly benefits available to the legal beneficiaries of a professional athlete subject to the Act, §406.095, are equal to or greater than the death benefits provided under the Act if equal to or greater than the maximum weekly benefit available under the Act.

*The provisions of this §112.402 adopted to be effective October 1, 1992, 17 TexReg 6362; amended to be effective June 5, 2005 30 TexReg 3231.*