

Ensuring they're Insured – Contractor Insurances and Your Obligations as a Hotel Owner or Licensee

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Our industry is quite unique in that we, as employers, are responsible for the health, safety and welfare of many, many people day in day out. Due to the nature of our business, there are in general more members of the general public frequently in our place of work than in any other.

And as our hotels have, for the most part, more pedestrian 'traffic' running through them than in other workplace, there is generally a lot more wear and tear on our hotels too, which requires the use of contractors to assist us with ongoing general upkeep and security services.

This article examines the importance of ensuring that your hotel only uses contractors who hold the necessary insurances, which will protect you and your business to some extent in the event of something going wrong.

So, as a hotel owner or licensee, what are your obligations so far as contractor insurances are concerned?

The NSW *OHS Act 2000* highlights the fact that employers are responsible not only for the health and safety of their employees in the workplace, but also others, such as contractors, who come into the workplace.

*Section 8(2) of the OHS Act requires employers to ensure that persons other than their workers are not exposed to risks while in the employer's workplace. These persons include **contractors, customers and visitors.***

If there are significant risks in the workplace, there may be a need for site induction training and procedures for managing people while on the premises.
Source: WorkCover NSW

The NSW *Workers Compensation Act 1987* highlights the point that not all contractors will be deemed as 'independent' from the workplace in the event of an incident (and a potential workers compensation insurance claim).

What the Act points to is that some contractors may be a "deemed worker", which means that for any claim, the contractor may be seen as an employee of the "Principal's" (you) company, and therefore that company is liable for any workers compensation claim that may arise.

This is why it is an excellent idea to firstly establish whether or not the contractor/s you use in your business would be "deemed workers" under the act, and secondly, to make sure that you have copies of that each of those contractors current insurances.

Who may be a "deemed worker"?

A contractor who is a "deemed worker" is usually a sole trader and who does not employ any staff, work for any other entity and does not subcontract any part of the work and one who does not operate an independent business.

This is ordinarily a situation where the "Principal" (you) retains control over all aspects of the work and provides the materials for the work to be completed. This contractor would normally work defined/regular hours exclusively for the "Principal" and is paid a fixed/set rate per hour.

A contractor who is not a "deemed worker" is ordinarily an incorporated company, or partnership or a sole trader who employs themselves and/or others to undertake the work.

Where the contractor is not a "deemed worker" the "Principal" (you) should ensure that this contractor has a current workers compensation (and public liability and professional indemnity where applicable) insurance policy in place with no overdue fees, premiums or charges owing as the "Principal" in this case, under the law be held liable for:

- Any injuries to the worker/s (S 20 Workers Compensation Act 1987)
- Any insurance premiums and charges with respect to the work being undertaken in connection with the contract (S 175B Workers Compensation Act 1987)

What do we need to know and (more importantly) what do we need to do about contractors insurances?

Some Handy Tips on Contractor Insurances:

- As a hotel owner/licensee, you should hold copies of the Certificates of Currency for (at least the) workers compensation and public liability insurance policies for each and every contractor you engage for any work on your premises securely on file.
- Enter into your diary, the dates each of your contractor's insurances expire and get in contact with them to remind them to renew the policies ahead of time
- Don't use a contractor for work in your hotel until you have sighted and taken copies of their certificates of currency
- Don't accept a contractor telling you "...I'll get you the insurances tomorrow, but I'll just finish the job today." It could be very expensive to your business, both in terms of time and money spent if something were to go wrong.

Three key types of insurance and what they cover:

Professional indemnity insurance

Covers against claims for professional advice, design, contract administration and project management.

Public liability insurance

This covers the contractor if anyone is injured as a result of the work being undertaken. If the contractor does not have this type of insurance, you could be liable because you own/control the property.

Workers compensation or WorkCover insurance

Make sure all employees are covered by their employer for workers compensation. This insurance covers employees who are injured at work.

If employees are not insured, you could be liable to pay the costs of any claim. In some circumstances, under the Workers Compensation Act 1987, these people can be regarded as your employees (See above).

Source: NSW Office of Fair Trading

Further Resources

The Smart OHS Safety Smart online system at www.ahasmartohs.com.au has a unique Contractor Insurances tool, which allows registered AHA (NSW) members to enter the details of all contractor insurances once with the expiry dates. When a policy becomes due for renewal, the system sends an email to the member reminding them to request the contractor to provide details of the new policy.

Hotel Employers Mutual is a specialised workers compensation insurance fund set up for, and to provide additional benefits to, AHA (NSW) members.
www.hotelemployersmutual.com.au

WorkCover NSW can provide information on workers compensation, injury management and OHS. www.workcover.nsw.gov.au or 13 10 50.