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Liability of General Contractors and Subcontractors Under New York State Workers' Compensation Law

Non-profit corporations are legally required to obtain workers' compensation insurance for their employees, as are all other employers. In addition, they are responsible for making sure that employees employed by their subcontractors have workers' compensation insurance. Section 56 of the New York State Workers' Compensation Law ("WCL") imposes on the non-profit corporation, as a general employer, compensation liability for employees of its uninsured subcontractors. The liability of the general contractor is secondary, and primary responsibility is placed on the subcontractor. Thus the burden on the general contractor arises only when the subcontractor has failed to provide compensation for the injured employee.

Section 56 of the WCL does not apply when a non-profit corporation contracts with others to perform work directly for the non-profit. Only when a non-profit subcontracts all or any part of its contract does the statute apply. Courts will reach back to the principal contractor even if the principal contractor has been misled as to the existence of the subcontractor's insurance coverage.

What Nonprofits Can Do: In order for a non-profit corporation to protect itself from compensation liability, the non-profit should require subcontractors to furnish proof of its own workers' compensation coverage. For a subcontractor with coverage, this would mean obtaining from its insurance carrier, typically at no cost, a certificate naming the non-profit as addressee. By this method, a non-profit corporation, as addressee on the insurance certificate, would be notified by the insurance carrier if the subcontractor's policy was cancelled, not renewed, or the amount of coverage changed. In addition, the non-profit corporation should include language, in all of its contracts, requiring each subcontractor to maintain workers' compensation insurance.

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