

BWC's Other States Coverage – Audits – What to expect

What is a premium audit?

A workers' compensation premium audit is an examination of policyholder records to ensure accurate policy premium. Since BWC bases the premium at policy inception on payroll estimates, the audit determines the final premium amount.

Who will conduct the premium audit

The Other States Coverage Unit, or a BWC-selected premium audit vendor, completes the audit.

When will BWC complete premium audits for the Other States Coverage program?

Each year, when your Other States Coverage policy expires, BWC conducts a premium audit focusing on exposures outside Ohio.

The audit verifies the premium is fair and accurate. The auditor compares the policy's estimated payroll with the actual payroll for the policy year.

The auditor will review employee duties to verify they are properly classified. He or she will also verify coverage or exemption status for independent contractors and owner-operators.

Premium audits are also required for any policies that are canceled mid-term.

How will BWC conduct the audit?

BWC requires each employer to participate in a physical, phone or voluntary (email or mail) audit based on the size and type of operations.

What documents will BWC require for the audit?

Documentation requirements may vary. In general, BWC will require you to have the types of documents listed below available.

- Payroll documents by state and classification for the Other States Coverage policy term
- Federal income tax return
- W-2s and Form W-3
- 1099s and Form 1096
- List of business location(s)
- Employer quarterly 941s payroll tax returns and Form 940 (or annual 943 or 944 forms, if applicable)
- Quarterly state unemployment wage reports for all states applicable
- Description of business operations for each location and job classification
- Owner, officer, partner list and their job duties
- Job cost records, contracts and invoices
- Certificates of workers' compensation coverage for subcontractor and/or independent contractors or supporting documentation of independent status.
- Quarterly fuel tax reports (trucking industry)

When does BWC charge premiums for subcontractors and/or independent contractors?

A **subcontractor** is a separate business hired to perform a specific job. Subcontractors generally have employees that perform work for them. If a subcontractor has employees, he or she must have workers' compensation coverage. You will be charged premium based on the wages paid to the subcontractor if the subcontractor does not have workers' compensation coverage outside of Ohio.

BWC recommends you collect certificates of coverage for all subcontractors you hire.

Independent contractors are individuals - with no employees - hired to perform a service for a business. An independent contractor performs a separate and distinct service from the employer. He or she is not under the employer's control or direction. Typically, independent contractors are excluded from premium assessment.

Note: Simply calling a person an independent contractor does not automatically exempt you from your legal obligation to pay workers' compensation premiums. If you answer yes to any of the following questions, the individual contract laborer is most likely an employee:

- Do you pay the person hourly (or by the piece, day, or week)?
- Does the person perform work that regular employees of your business perform?
- Is all (or a majority) of the work that is the general nature of your business performed by contract labor?
- Do you provide the material for the job(s)?
- Do you control the time and manner of work?

What are the guidelines for validating independent contractor vs. employee status?

Independent contractors maintain a separate business, bring more than their personal labor and provide their own equipment. They must be customarily engaged in an independent trade outside of the employer's usual course of business.

- BWC may assess premium at audit for any independent contractor who does not have workers' compensation coverage, or who BWC deems not be an independent contractor.

BWC recommends you gather and retain the following documents for each individual hired as an independent contractor:

1. Certificate of insurance for general liability coverage;
2. Certificate of insurance for workers' compensation policy or certificate of exemption if applicable;
3. A copy of the independent contractor's license¹;
4. A written contract in place for each job conducted by the individual contractor.

Note: If the independent contractor hires laborers to help complete his or her work, BWC considers the independent contractor an employer for the purpose of workers' compensation. If the independent contractor does not have workers' compensation coverage, his or her wages and the wages paid to the laborers would be included in your payroll.

When can I exclude payroll for hired truckers and/or owner-operators?

BWC will evaluate the employment situation to determine employee versus independent contractor status.

To exclude hired truckers or owner-operators from your payroll, you must:

- Provide certificates of workers' compensation coverage or exemption for the hired trucker or owner-operator; or
- Provide documentation that the trucker or owner-operator is truly an independent contractor and not an employee.

In addition, the policyholder should provide documentation that the trucker or owner-operator has not hired any labor to assist in his or her work.

What documentation does BWC require to confirm independent contractor status for hired truckers and/or owner-operators?

Many states statutorily exclude owner-operators from workers' compensation coverage or owner-operators can elect exclusion. In some states, the common law determines the status of the individual.

If BWC determines an independent contractor is in an employer-employee relationship, BWC will include these drivers in the audited payroll.

For BWC to classify a trucker properly as an independent contractor for Other State Coverage, BWC requires the following to exist in the relationship:

- The individual owns a vehicle licensed and registered as a truck, road tractor or truck tractor by a governmental agency;

(If an individual holds a truck under a lease arrangement it must be bona fide. For Other States Coverage Program purposes, any lease arrangement, loan or loan guarantee cannot be with the hiring entity or any affiliate of the hiring entity. If discovered, we will include these drivers in the audited payroll due to the uncertainty of driver classification.);

- The individual is responsible for the maintenance of the vehicle;
- The individual is responsible for substantially all of the principle operating costs of the vehicle and equipment, including maintenance, fuel, repairs, supplies, vehicle insurance and personal expenses;
- The individual is responsible for supplying the necessary services to operate the equipment;
- The individual's compensation is based on factors related to the work performed, such as a mileage-based rates or a percentage of any schedule of rates;
- The individual substantially controls the means and manner of performing services, in conformance with regulatory requirements and specifications of a shipper;

- The individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee.

In addition to normal audit materials, BWC will require you to provide the following documents for each individual presented as an independent contractor:

- Any and all lease or loan arrangements where the individual does not own the vehicle/power unit/tractor;
- The written agreement between the individual and motor carrier for permanent or trip leasing identifying the vehicle/power unit/tractor owned by the individual. This agreement must meet the requirements of the federal truth in leasing regulation [49 CFR Part 376].

What if a claim is allowed for a subcontractor, independent contractor or owner-operator whose payroll the Other States Coverage audit excluded?

The auditor's decision to exclude payroll is for audit purposes only. If a claim is allowed for an individual whose payroll the audit excluded, the other states coverage unit has the right to collect premium for said individual.

What can I do if I disagree with the results of the audit?

You have two years from the inception of the policy year to submit a dispute in writing. The Other States Coverage audit dispute committee will review the dispute, collect any additional information necessary, and issue a decision. The committee consists of members from several divisions including: legal, underwriting and audit.

Will the premium audit consider filed C-110 forms in determining the amount of payroll assigned to states outside of Ohio?

No. Other states do not recognize C-110 forms as valid proof of workers' compensation coverage. A worker injured in another state will likely be able to file a claim there, even with an executed C-110 form.

Continues next page

Accordingly, the premium audit will not review C-110 forms in dividing payroll between Ohio and other states. Instead, the premium auditor will focus on the actual exposure outside of Ohio. For example, wages for construction, roofing jobs, or similar exposures in other states will be reported to the states where the work took place. In most cases, for truckers, salespersons, clerical staff or similar employees who are non-residents of Ohio, the payroll will be reported to the employees' state of residence.

In no event will C-110 forms qualify as proof of "other insurance" in the General Section, paragraph E or Part One, paragraph E of the Other States Coverage policy. An executed C-110 form is not coverage under the workers' compensation law of another state.

As a reminder, any payroll that is reported to the Other States Coverage policy can be removed from the Ohio BWC policy to avoid double payment. Clear records of payroll division should be kept by the policyholder.

¹ In Ohio, the Ohio Construction Industry Licensing Board issues State Licenses to commercial contractors for the following trades: Electrical, HVAC, hydronics, plumbing, and refrigeration. Other construction industry contractors are regulated at the local level with municipalities typically requiring a contractor license within that jurisdiction and a permit to do the work