

## **Domestics, Contractors, and the Homeowners Policy**

Along with an increase in the number of dual income households comes an increase in the number of people who avail themselves of a “domestic servant.” Whether it is a housekeeper who works in the home while mom and dad are away at jobs or a “live-in nanny” arrangement, paramount on the minds of the homeowner should be knowing what insurance coverage is available in the event of injury to the domestic worker. Add to this situation independent contractors such as plumbers, yard care personnel, or roofers who find themselves on the premises of the homeowner and the typical homeowner finds himself facing an injury and/or lawsuit exposure. This article examines what coverage is provided by the standard Insurance Services Office (ISO) homeowners policy for such situations. The 04/91 and 10/00 edition dates of the homeowners policy are identical in the coverage provided.

### **Workers Compensation Coverage Not In Place**

Unfortunately, very few homeowners purchase workers compensation (WC) for the domestic they hire. While Florida statute 440.02(15)(c)1. exempts “domestic servants in private homes” from the definition of “employment” the recommendation by the agency should always be to purchase such coverage. The lack of WC coverage forces the homeowner to rely on his homeowners policy for coverage for an injured domestic. While there may be benefits available under a health or disability policy, such coverage will not be considered here. Two coverages are available under the homeowners policy: medical payments and liability.

Medical payments coverage will respond for the medical bills of an injured domestic regardless of negligence on the part of the homeowner. Typical limits of coverage are \$1,000 to \$5,000. This coverage would also respond for the injury of an independent contractor on the premises only if the contractor were not required to have WC coverage in place. For example, a sole proprietor roofer who has filed the proper exemption notice with the Division of Workers Compensation is not required to carry WC coverage. Should he be injured on the premises of the homeowner, regardless of negligence, the medical payments coverage will respond. Note that when medical payments responds it provides coverage only for medical expenses and does not provide coverage for lost wages.

Liability coverage responds for both domestics and independent contractors only if the homeowner is legally obligated (negligent) for the injury. Unlike WC coverage, the homeowners liability coverage will not respond regardless of fault. For example, a roofer at the insured’s residence is injured through no negligence of the homeowner and falls off the roof injuring himself. Since there was no negligence on the part of the homeowner, coverage is limited to medical payments as outlined above --- liability coverage will not respond once the medical payments limits are exhausted. Of course if the injured contractor filed suit against the homeowners alleging negligence the homeowners policy will defend the homeowner. The same principles (negligence required) apply for an injured domestic.

## **Workers Compensation Coverage In Place**

In looking at the domestic situation the homeowner is always better off to purchase WC coverage for the domestic worker. Granted, markets are limited for such coverage, but the agency should always point out the availability of such coverage and document any rejection by the insured. Purchasing WC coverage on a domestic provides significant benefits to the domestic such as medical coverage from first dollar on an unlimited basis and lost wages coverage after the appropriate waiting period. Additionally, the employer (homeowner) receives protection under the “exclusive remedy” doctrine when WC benefits are elected. While Florida Statute [440.11(1)(b.)2] does permit suits against the employer, the standard is so high that successful suits are rare.

Making certain that a contractor has WC coverage in place is one indicator of a reputable business owner. While the homeowner would not purchase coverage on the contractor (no employment arrangement exists) it is still appropriate to make certain all contractors working on the insured’s premises have WC coverage. Finally, if the contractor is uninsured and has employees the homeowner is not required to purchase WC coverage. Since the homeowner is not an employer they do not become the statutory employer of the employees of the uninsured contractor.

Medical payments coverage would not respond for the injuries of a domestic with a WC policy in place, purchased by the homeowner. The homeowners policy excludes such coverage if the insured has voluntarily provided benefits under a WC policy, non-occupational disability law, or occupational disease law. Since the WC policy provides coverage for medical bills from first dollar with no deductible, and with no dollar limit this exclusion is not significant. For a contractor covered by WC, medical payments would also not respond since the exclusion states there is no coverage if WC coverage is in effect, regardless of who has provided it.

Liability coverage for an injured domestic covered by WC would not respond since the insured voluntarily provided WC benefits to the domestic. Remember however, in purchasing WC coverage on the domestic the insured has obtained protection from lawsuits since WC is an employee’s sole remedy in Florida. (Other states vary.) For an injured contractor (or employee of a contractor) the liability coverage in the homeowners policy would respond if there were negligence on the part of the homeowner. Without negligence there is no “voluntary” paying of liability coverage. Since the contractor would have WC coverage in place that policy would respond for the medical expenses and lost wages. If the WC carrier subrogated against the homeowner claiming negligence, the homeowners policy would respond for the bodily injury payments as well as the defense costs.

## **Information From IRMI**

The International Risk Management Institute (IRMI) has published the below “risk tips”

More and more homeowners in the United States now employ domestic workers, either on a full-time or part-time basis. In fact, the U.S. Census Bureau estimates that there are at least 1.5 million domestic workers across the country. The services these domestics render are great, but so are the risks for the employer. The following are some ways for you to mitigate the risks of employing domestic workers and for ensuring that these workers have the proper protection as well.

- If hiring a domestic worker directly, run a background check on potential domestics to see if they (a) are U.S. citizens, (b) have a history of filing lawsuits, (c) have credit problems, or (d) have a criminal record. If using an employment agency, verify the above steps are performed. Prospective domestics with major concerns of these types should not be hired.
- Check with your insurance agent to see if you need to procure workers compensation coverage. Your agent will be familiar with your state laws concerning this issue. Of course, you may choose to voluntarily provide workers compensation coverage, which may be a good idea. As discussed below, even if your homeowners policy covers injuries to your domestic employee, the policy limit could be grossly inadequate in the event of serious injury, permanent disability, or death.
- The advantage of workers compensation coverage is that it provides broader protection (e.g., disability payments) than your homeowners policy, including unlimited medical expenses in most states. So, even if not required by law, it is a good idea to consider voluntarily providing this important coverage.
- If an outside firm or agency is used to hire your domestic, verify the worker has workers compensation coverage. Obtain a certificate of insurance from the employment agency on an annual basis showing this coverage.
- Prepare a well-organized and documented human resource file for every domestic employee. In addition, you should have an employment application as well as an employment manual or handbook. This manual will reduce the chances of an employment-related lawsuit because it can include protective provisions detailing your opposition to any employee mistreatment. An employee manual written or revised by an experienced attorney is an even more effective risk control recommendation.
- If there are multiple domestic workers, an employment practices liability (EPL) policy may be needed. This coverage can protect you from a wide variety of lawsuits, including allegations of discrimination, wrongful termination, harassment, and slander. A personal injury endorsement under your homeowners policy is also recommended.
- Discuss with your insurance agent the possibility of increasing the personal liability and medical payments limits under your homeowners policy to the

- highest available limits, particularly if workers compensation benefits are not required or purchased. A personal umbrella policy is also recommended.
- Consider some type of fidelity bond for these employees, particularly for new employees. This bond will protect you if the domestic worker commits a dishonest act in your employment (e.g., theft of jewelry). If an employment agency or service provides these employees, verify that the employment agency has purchased fidelity bonds on them and ask for a copy of the bond certification form.
  - Make sure that your employment practices comply with federal requirements, such as the withholding of payroll taxes and proof of citizenship.

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### **Choose Your Home Contractors Wisely**

Homeowners regularly hire general contractors and subcontractors to work on their homes but are often unaware of the large exposures that could result in hiring an unlicensed or uninsured contractor, particularly for large projects. For example, an uninsured roofer working on your home may sue you for damages if he is injured on the job. The following key rules should thus be followed when selecting a contractor to work on your home.

- Be wary of contractors who solicit business door-to-door or via cold calls. In addition, avoid contractors who quote you a price that will automatically go up the next day or week if you don't accept it immediately.
- Obtain recommendations from friends, family members, and neighbors about experienced and reputable contractors who have performed excellent work for them.
- Ask for a written estimate from the contractor that includes any oral agreements the contractor makes in this process. The estimate should contain a line-by-line breakdown of costs, including materials and labor.
- Verify that the contractor is licensed, bonded, and properly insured. Ask for certificates of insurance for workers compensation and general liability policies. You should also receive these certificates for any subcontractor the general contractor may hire to work on your home.
- Contact the Better Business Bureau to see if complaints have been filed against the contractor. This can be performed via the bureau's Web site at [www.bbb.org](http://www.bbb.org).
- Get a copy of the proposed contract. Ideally, it should include a hold harmless clause in your favor, particularly for major work such as when heavy equipment will be used in constructing a swimming pool. A hold harmless clause specifies that the contractor will indemnify you with respect to your liability to members of the public

who are injured or whose property is damaged during the course of the contractor's operations. The contract should also explicitly establish an independent contractor relationship

- Ask a knowledgeable friend, relative, or attorney to review the home repair contract before you sign.

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### **Recommendations**

Despite the cost of WC coverage on a domestic any homeowner who employs a domestic worker should be advised to purchase WC coverage. Additionally, the homeowner should make certain that any contractor they use for services is licensed and insured with WC as well as other appropriate coverages, such as commercial general liability.

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