



Premium Fraud Draws More Attention as Economy Totters

October 28, 2008

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Experts on workers' compensation premium fraud say declining economic conditions could result in more employers falsifying employee classification, understating payrolls or attempting to evade coverage requirements.

That possibility could give added emphasis to efforts by carriers and regulators to detect and punish such fraud.

James Quiggle, communications director for the Coalition Against Insurance Fraud, reports the coalition has seen "a trend towards passing laws making premium fraud a specific crime."

"This is, in part, because of growing attention being paid to the so-called 'underground economies' of many states," Quiggle said.

California, Florida, Illinois, New Jersey, New York and Texas are among the states that have made workers' compensation premium fraud a specific felony, the coalition noted.

"Dodging work comp premiums by hiding Hispanic and other immigrant workers in shell companies continues to be a trend in New York, California, Florida and other states," Quiggle commented. "This is especially true in construction."

Brian Keegan, director of public information for the New York State Workers' Compensation Board, told WorkCompCentral Monday that in 2007, New York "saw sweeping statutory reform in the workers' compensation system, which included establishing civil penalties for misrepresenting payroll as well as civil and criminal penalties for failure to keep records."

"The board has highlighted premium fraud and health care provider fraud as the two top priorities for our investigative staff," Keegan noted.

Keegan added that in addition to the board's own efforts in combating premium fraud, "we are also part of the New York State task force addressing employee misclassification and are coordinating our efforts with other state agencies to address those businesses that misrepresent the number or position of their employees in order to reduce their premiums."

Thus far, the combined efforts “have uncovered millions of dollars in unreported income that warranted higher premiums.”

The Fiscal Policy Institute has reported that 50,000 or more New York City construction workers – one in four – are employed “off the books” or have been misclassified as independent contractors.

As a result, the institute said, insurers and the state lost \$489 million in workers’ compensation premiums, taxes and other expenses in 2005. The total for 2008 could reach \$557 million, the institute calculated.

A study by Cornell University researchers concluded more than 39,500 employers throughout New York State misclassify workers annually.

Quiggle reported that in California, a task force has used helicopters to “swoop onto work sites” to check for proper workers’ compensation coverage.

In an article prepared by Quiggle for the coalition, Dominic Dugo, an expert on premium fraud with the San Diego County District Attorney’s Office, called “premium fraud and tax evasion within the underground economy ... a serious, costly crime throughout California.”

Some employers in high-risk California industries may hide as much as 75% of their payroll, costing insurers up to \$3.8 billion a year in lost workers’ compensation premiums, according to a 2007 study by University of California at Berkeley researchers.

Many suspected premium fraud cases at California’s state-run workers’ compensation insurer involve construction firms, researchers reported. On Oct. 16, California Division of Labor Standards Enforcement inspectors checked 369 companies at residential and commercial construction sites across the state and found that one quarter of them had failed to obtain workers' compensation insurance.

In Florida, regulators issued more than 2,500 stop-work orders and imposed more than \$75 million in fines in fiscal year 2006-2007, the coalition noted. Premium schemes in the state also have been the target of a grand jury and task force investigation.

Howard Goldblatt, director of government affairs for the coalition, told WorkCompCentral it is "a bit too early to perceive the issues that may be coming up next year" in state legislative sessions.

However, Goldblatt said, any efforts to deal with fraud in the workers' compensation arena "will include some workers' compensation fraud elements. I don't see how they could not."

In 2008, several states dealt with fraud issues, Goldblatt said. Vermont expanded its workers' compensation law, requiring the Department of Labor to have an anti-fraud

plan. The changes in the law also allow the department to have access to the anti-fraud plans of workers' compensation carriers, he added.

However, Goldblatt reported, Vermont did not create a workers' comp fraud unit.

In Florida, attention has focused on employee leasing companies and businesses that employ those leased workers, as to which entity is responsible for providing workers' compensation coverage for those workers, Goldblatt said. The issue typically is spelled out in the contract between the leasing company and the employing company, he said.

In some instances, businesses with "bad records" in workers' compensation have used contractual arrangements to create a new business entity with a clean record, Goldblatt explained.

He said additional anti-fraud efforts are continuing in New Jersey, where legislation passed to give the state insurance fraud prosecutor a greater role in prosecuting businesses that don't have workers' compensation coverage. But the governor issued a "conditional veto" of the bill, leaving the matter unresolved, Goldblatt said.

The governor wanted the legislation to "clearly spell out the responsibilities" of various agencies, in particular whether local prosecutors could pursue fraud cases, Goldblatt explained.

"We're hoping that will be clarified," Goldblatt said. He reported that New Jersey's legislative calendar starts in even-numbered years, with elections for legislators held in odd-numbered years.

While various states have moved to attack premium fraud in recent years, there's still the possibility that more can be done to make the effort more effective, Goldblatt believes.

"Looking forward, if states have required workers' compensation coverage, they can do more to pursue businesses that don't meet those requirements," he said.

"A lot of state have laws requiring coverage. But there may be a lag in the law - in enforcing the law on businesses without the insurance," Goldblatt said.

That issue may become more important during the current economic conditions, he cautioned.

"In a slowing economy, you may have more businesses looking to cut corners," Goldblatt said. "So you also could have more states looking at premium fraud."

Terry Frakes, senior vice president for communication with Texas Mutual Insurance Co., said he has "heard that as the economy worsens, premium fraud may increase."

“You would think that’s likely to be the case,” Frakes said. “But I’m not sure that applies in Texas.” That’s because of “what some might call the safety valve of nonsubscription,” Frakes said.

Texas doesn’t require most employers to carry workers’ compensation coverage, and many employers – including a large number of small and medium-sized businesses – choose to offer their employees alternative plans which provide some medical and indemnity benefits.

“We see an increase in nonsubscription in hard economic times,” Frakes said. “I think future Department of Insurance research will show that,” he added.

However, Frakes noted, “there are employers who have to have workers’ compensation coverage, either because of the nature of their business or because they’re dealing with government agencies.”

In those cases, there could be increased temptation to attempt to cheat on premium costs, Frakes said.

Frakes commented that premium fraud cases may be difficult to detect and prosecute, and “can take years” to resolve.

But Texas and other states appear to be putting more emphasis on stopping such fraud, and other states may soon be stepping up their efforts as well.