

INSURANCE CONSIDERATIONS FOR CONTRACT CLIMBERS

By Rick Weden

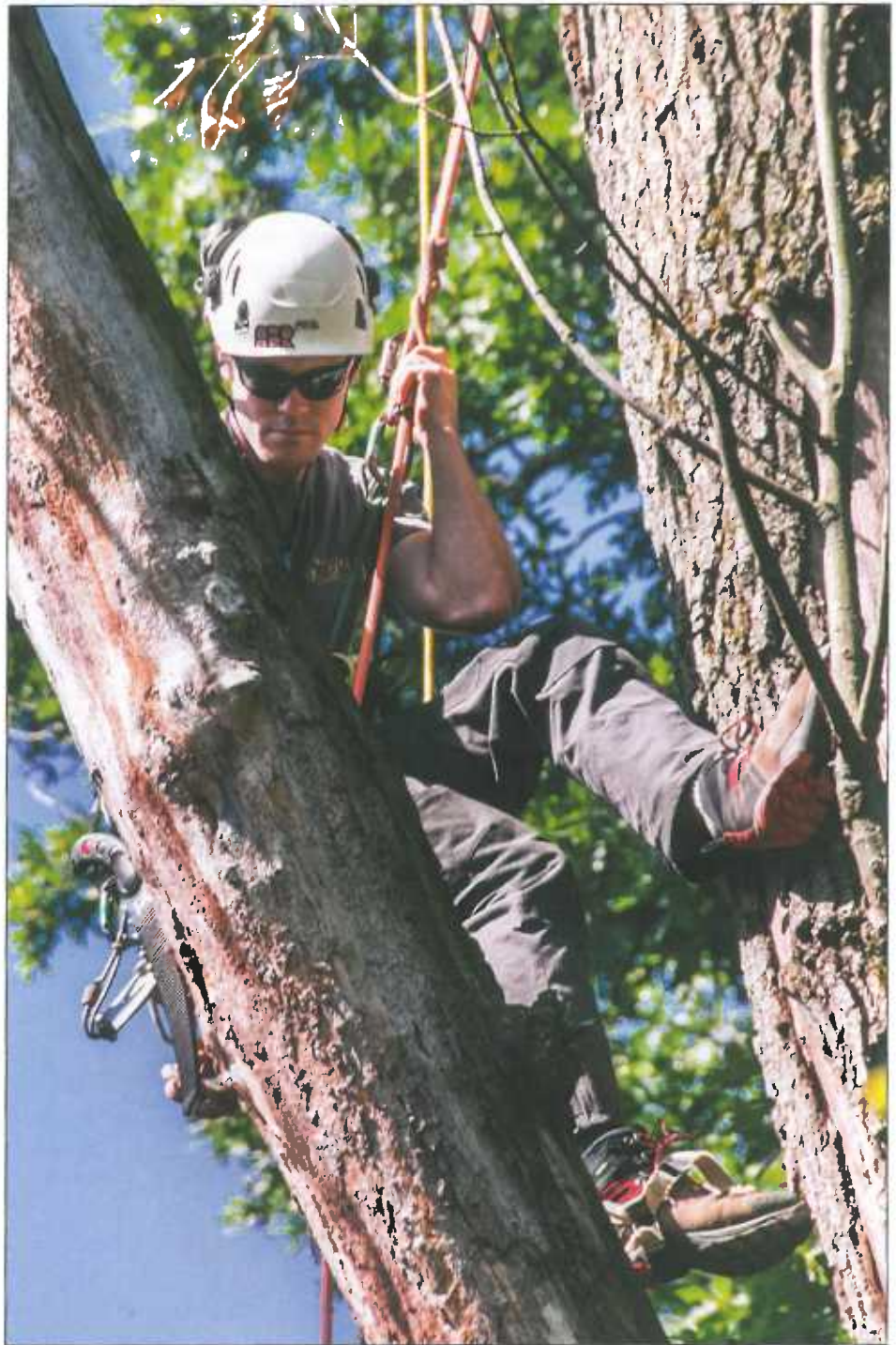
The term “contract climber” is prevalent in the tree care industry. With a current and foreseeable shortage of experienced, skilled climbers, many tree care professionals who fit this description might choose to establish themselves as what is often referred to as an independent contractor or contract climber. This article will take a look at the insurance concerns and a couple of other business-related issues that confront those who fall under this category.

Contract climbers serve as hired guns to other established tree care companies and possibly to others in need of their skills and experience. At times, one or more individuals who possess good skills will band together, forming a small, loose, part-time tree care entity to generate additional income. For the right person and under the right circumstances, such a venture can be lucrative, enabling these professionals to earn additional income on the side by doing something that is often a passion.

These individuals fill a critical need in the industry, as many are skilled in the more complex aspects of tree work. Their assistance to another company on certain projects can be of extreme value, not only from a production aspect but from a safety aspect for everyone on a work site. Furthermore, it is often these individuals, with their entrepreneurial spirit, who are the embryonic spark that results in the establishment of new, successful tree care companies, becoming part of the future of the industry. So are these folks important? You bet!

What am I?

When one ventures out as a contract climber, even as a part-time weekend endeavor, he or she can wind up assuming a significant amount of personal risk and liability, as many leave the protection they probably have while working for their full-time employer. Insurance, tax accountability and a host of other possible issues need to be considered.



As a contract climber, what is your legal status when you arrive at a work site? Here, Jake Carufel of Kappen Tree Service climbs during the AMVets War Dog project. Photo courtesy of Jack & Jane Purslow.

“When I venture out as a contract climber, what am I?” one might ask.

As a contract climber, what is your legal status when you arrive at a work site? Are you an independent contractor, a subcontractor or an employee of someone else? The answer to this question is – it depends.

If you are being hired by another tree care company to work on a project for one of their customers, chances are that your legal status is probably that of an employee of the company that has hired you, even if you are only on the job with them for a predetermined period of time – a day, a

few days or more. The manner in which the company is paying you – W-2, 1099, cash (God forbid!) – may not necessarily dictate your work status. These are tax-related matters, and generally all that they determine is who is responsible for tax and other withholdings. If you are being paid on a W-2, you are clearly being considered an employee by the entity that is hiring you.

From an insurance standpoint, in situations where one is hired as an employee, there is no need for the individual worker to purchase any of the typical policies found in the tree care industry such as General Liability, Workers' Compensation, Auto and perhaps Umbrella policies. You should, of course, always be sure you have some form of quality medical insurance, which you may have to purchase yourself regardless of what your employment status might be. When it comes to workers' compensation, the regulations for benefits and requirements of who is legally required to have coverage, or who can get coverage, can vary greatly from one state to another. If you are working, or planning on working, in these kinds of settings, it is a wise idea to familiarize yourself with the regulations of the state(s) you plan to work in.

Incidentally, in my tree-care-insurance travels, I have encountered several situations where I was told of employers who were requiring employees, usually 1099 employees, to sign written contracts, the intent of which was to classify the employees as subcontractors. Beware of situations like these, as these may not be legal documents and may, in fact, be in violation of state employment laws. Again, I remind you that employment laws can vary from one state to another, so if you are considering going out as a "contract" worker, you should completely familiarize yourself with the regulations and how they apply in the state(s) you work in.

What about situations where you are being hired as an individual contract climber by a company that is not in the tree care industry, i.e., a real-estate developer, a residential homebuilder, etc.? In these settings, there is a chance you will be considered a subcontractor, as you are being hired by an entity not in the tree care business and for the sole reason of your skills

as a tree care professional.

In these settings, if you are classified as a subcontractor, you should have your own insurance in place, including General Liability and possibly Workers' Compensation (if you are bringing helpers/employees), Business Auto and possibly an Umbrella Policy. You also should expect to be prepared for this, as the hiring party may require you to enter into a written contract specifying the insurance requirements that you have in place, as well as other terms and conditions typically assumed by a subcontractor. In situations like these, you are, in essence, operating as your own tree care company.

What about work projects you have secured yourself directly from a property owner or manager, with no other parties involved? Here you fall under the conventional definition of an independent contractor. In this case, as well, you are operating as a true and independent tree care company. As with the subcontractor example, you should strongly consider obtaining a General Liability Policy, Business Auto Policy



If you are hired by another tree care company to work on a project for one of their customers, chances are that your legal status is probably that of an employee of the company that has hired you. TCIA staff file photo from an Arbor Day event in Prescott Park, Portsmouth, New Hampshire.

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and, if you have employees or helpers, a Workers' Compensation Policy. Remember, those "helpers" you bring along may be considered by law to be your employees and, depending on the state in which you work, you may be required by law to have a Workers' Compensation Policy.

Under the independent-contractor scenario, taking things a step further, you may find yourself hiring subcontractors to assist in performing certain jobs, such as a crane company or landscaping or hard-scape work. In these cases, you are now acting as a general contractor. As such, it is now you who is the contracting party, and in these cases, you should be requiring your subcontractors to have specific insurance coverage. You also should be requiring them to enter into written subcontract agreements with you designed to protect your entity from claims stemming from their operations as your subcontractors.

What entity should I operate under?

Should you operate as a sole proprietorship, a limited liability company (LLC) or one of the other varieties of incorporated entities? The choice of entity one decides to operate under should be discussed and evaluated with a qualified CPA as well as an attorney, as there are a number of tax and legal advantages to each. This writer is not qualified to give advice in these areas, other than to say, get some professional help!

Many start off as sole proprietors, and as the individual starts taking on more work, they may then consider operating as another entity form such as an LLC or other corporate entity.

Stepping back to the earlier discussion on employee vs. subcontractor, establishing yourself under any one of the available entities may not change your status in certain work situations. For example, if one is operating under an LLC but accepts a job working as a contract climber for another tree care company, that worker may still, in fact, be considered an employee in that situation. Unfortunately, many of these kinds of questions only come up – and get a true legal answer – after a claim has occurred and a dispute has arisen over the status of the injured worker. Was the worker an employee or a subcontractor?



The choice of entity one decides to operate under should be discussed and evaluated with a qualified CPA as well as an attorney, as there are a number of tax and legal advantages to each. TCIA staff file photo.

When considering the various entities that one can establish himself or herself under, there are some insurance points to consider. For example, in most states, if one operates as a sole proprietor, the sole proprietor himself or herself is usually not required by law to have a Workers' Compensation policy. But if a sole proprietor hires a worker, then the sole proprietor may be required to have Workers' Compensation insurance for the worker(s) they hire. The laws vary by state, so again, get familiar with the laws as they pertain to this in the state(s) that you work in or plan to work in.

The same or similar applies in cases of LLC entities. The "member(s)" of the

LLC are not required to have Workers' Compensation on themselves, but may be required to have the coverage if they have any employees; a similar rule applies to corporations. In most cases, under a corporation, the corporate officers are automatically considered employees of the corporation and have benefits under a Workers' Compensation policy.

On the flip side of this, in many states, a sole proprietor can file to have himself or herself included under Workers' Compensation benefits, and the same can apply under an LLC where the members can file to have Workers' Compensation benefits. Understand that when a sole proprietor or LLC members "opt in" for benefits under Workers' Compensation, a portion or set amount of payroll will be assigned to them under the policy rating, which will increase the cost of the Workers' Compensation.

Under traditional corporations, corporate officers are automatically considered employees of the corporation and are automatically covered under the policy. A portion of their payroll is used in the rating of the policy, which will increase the cost. As

with other entity arrangements, corporate officers can file to have themselves excluded from the policy coverage as well. Remember when making these considerations, though, that Workers' Compensation benefits can have value to a sole proprietor, LLC member and corporate officer, not only because they offer medical benefits, but also because the coverage includes disability benefits.

Additional insurance considerations

What about General Liability, Business Auto, Inland Marine and Umbrella insurance?

Unfortunately, for the most part, the insurance options for contract climbers and small start-up tree care companies are limited, as not many insurers are willing to take on start-up ventures in the tree care industry. The few that do often have restricted coverage in comparison to the insurers who specialize in the arboricultural field. Many of the insurers who have specialty in the tree care industry have high-minimum premium charges that are unaffordable for the start-up venture, and, more important, are often unwilling to entertain covering start-up or part-time operations.

Much of the General Liability insurance that is available to contract climbers and start-up companies is sourced from what is referred to as the "Excess and Surplus Lines" insurance market. The policies offered by these insurers are not as broad as the plans offered by the specialty insurers; however, for the most part they do address some of the basic exposures of an individual or start-up company, specifically property damage and bodily injury to third parties. These policies often contain a number of exclusions to their coverage, so when purchasing these policies it is extremely important that one get the entire picture of what the coverage is – and what is excluded.


Can a contract climber or a contract climber morphing into an independent tree care company have a business auto exposure? Yes, they can. Most everyone in contract climbing or any other individual tree care business owns a vehicle, usually a serviceable pickup truck they use to get to and from work sites. Under these circumstances, most private passenger

auto-insurance policies will probably be sufficient insurance for you. But you had best check with your auto-insurance company on this, as you are probably operating this vehicle for dual purposes of personal use and business use.

It is best to advise your insurer of what you are using your vehicle for and ask them if they will insure you under your current circumstances. I would also suggest you purchase as high a limit of auto-liability coverage as you can from your auto-insurance company. If they are not willing to extend insurance under your current situation, then you need to find another insurer who will, or perhaps get an actual Business Auto Policy.

On a more positive note, as a contract climber's business grows from say a single-person, part-time operation to a small, full-time company with one or more employees, and the entity develops a history of having insurance with good claims experience, the climber/business will probably qualify for better insurance plans with broader coverage and more options. These are, of course, contingent on favorable claims experience, evidence of sound business and safety practices and the industry qualifications of the owner of the company.

The content I have set forth here can in no way be considered comprehensive. I do hope this encourages anyone who currently operates as a contract climber, or who is further along in the beginning stages of building a legitimate company, to learn as much as possible about the exposures to risk, as well as other important considerations for operating your own business.

Rick Weden is team leader of the Tree Care Insurance Specialty Team at Corcoran & Havlin Insurance Group in Wellesley, Massachusetts, a division of Cross Insurance, based in Bangor, Maine. He and his team manage the insurance needs of a large and growing number of tree care professionals countrywide. He also is a member of TCIA and the Massachusetts Arborists Association (MAA). He has given numerous presentations on insurance topics at past TCI EXPOs and other gatherings and events for the tree care industry. 



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