

Tactics for Managing Workers' Comp Costs

Workers' Comp Policies for Payroll and Worker Classification

By Rick Weden

Being a provider of insurance programs for a number of tree care companies, I find myself explaining the various workers' compensation classification codes, rates, and rating rules to tree care company owners on a more-than-regular basis. Candidly, I have to say that not all of these "conversations" that I have with my clients run smoothly. Workers' compensation insurance is costly for those in the tree care industry and as a result, the subject can understandably become a lightning rod of sorts during insurance reviews and negotiations.

Further fuel to this challenging subject is the fact that many tree care companies offer a wide range of client services other than specific tree work and, as a result, a tree care company can legitimately have available to them a number of varied worker classifications and rates. The availability and use of these various worker classifications can have a significant impact on one's insurance costs.

The basis of this article is to take a closer look at some of the worker classification issues specific to the tree care industry.

The workers compensation worker classification system involves a lengthy and comprehensive series of detailed industry descriptions that all insurers who offer workers' compensation insurance use when determining which categories an insured company's workers will be assigned to and which rates they will charge for them. These "rules" can vary to some degree from state to state, so what may apply to a tree care company in one state may not apply in another state. If a company has operations in multiple states,



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then they may be subject to more than one set of state classification rules and exceptions.

I will address some of the more common areas where worker classification can come into question. There are, however, potentially numerous situations where other classifications may be applicable, depending on the specific services your tree care company offers.

Classification of ground crew workers vs. aerial tree workers

There is a common misconception that these workers fall into two separate work categories, with the Landscape Gardening class (0042) being assigned to all ground crew workers, and the Tree Pruning/Spraying class (0106) assigned to the aerial workers. If you break out the payrolls in this manner, the end result will be a significantly (and erroneously) reduced workers' compensation cost simply because the Landscape Gardening rate is generally lower than the rate for Tree Pruning. The fact is, however, that under

the workers' compensation rating rules, the Landscape Gardening Class is not allowable for these workers and all must fall under the Tree Pruning and Spraying class.

The reasoning behind this is fairly understandable and no surprise to the reader, as ground crew workers are subject to much the same hazards as their elevated co-workers, and in some cases more so. Working in drop zones, they are at risk of struck-bys,

exposed to electrical hazards, and operate much of same mechanical equipment as their aerial co-workers. They are also exposed to chipper related injuries, as well as lifting and falling injuries. There is also the likelihood of interchange between ground crew, and elevated workers on any given job.

It should also be noted that insurers are becoming increasingly aware of this and, as a result, their auditors are often on the lookout for situations where these two different classes are being used in these types of work situations.

Tree care companies with established and defined landscape gardening and planting services divisions

But what about cases where a tree care company has an established landscape gardening, planting, and maintenance division? In these situations it is possible to have workers performing these duties fall under the (0042) Landscape classification. Care must be taken however to properly document and report the payroll of these

workers, as well as managing their operations so they are physically separated from the actual tree care operations. It is also highly advisable that you obtain verification from the insurer that they are agreeable to the combined use of the tree work and landscape classifications, and that this practice is permissible in the state(s) they are operating in. This should include an established clear understanding between the insured and their insurer on the manner in how the payroll information is to be reported as well as how the work divisions are to be managed and accounted for.

Snow services

In cases where a tree care company offers snow removal services, insurers may want to use Class Code (9402) Street Cleaning and Drivers to account for the payroll of snow removal equipment operators. In many parts of the country, the payroll for this class has a tendency to fluctuate greatly from year to year due to varied snow fall from one season to the next.

Logging or lumbering classifications

Tree care companies that perform land clearing and other similar kinds of services may have these operations assigned to the Logging and Lumbering class (0702). This class usually carries a higher workers' comp rate than the (0106) Tree Pruning/Spraying class. If you are contemplating offering land clearing or similar types of services, it is advisable that you take this up with your insurer to familiarize yourself with this class and understand its potential effect on workers' compensation insurance costs.

Other classifications may be applicable

A tree care company may have other employee categories that call for other worker classifications and some of these can result in workers' comp cost reductions. Salespersons, consulting arborists, clerical workers, fleet and equipment maintenance and other yard type workers who solely and separately perform these and other duties may qualify for a less costly classification and rate. Again, it all boils down to what rating rules might apply in these situations as well as the agreement of one's insurer to use them.

Special state exceptions

Although too numerous to mention here, some states have special exceptions that may allow for some added flexibility in worker classification. This could have a positive effect on one's insurance costs. For example, in Massachusetts, under certain situations, one can separately classify workers in their PHC divisions separately, whereas in most all other states these workers always fall under the tree work class. Always consult carefully with your insurance providers, or your insurer's auditors on the availability of these to avoid problems with misclassification.

Fraud and abuse in the workers' compensation system

Sadly, there remain numerous instances of policy holder abuse in the workers' compensation system where business owners intentionally misclassify workers and "hide" payroll figures with the express intent to lower insurance costs. Even worse are more egregious situations, where employers may have no workers' compensation coverage at all. Company owners operating unlawfully in this manner not only pose a serious threat to their own workers, but also cause collateral damage as their practices are usually accompanied with unrealistically underpriced and poor

workmanship that above-board companies cannot compete against nor will they tolerate. Insurance fraud is now considered a felony in most all states, resulting in harsh penalties of imprisonment and/or stiff fines levied against violators.

Communication is important

As a final note, I cannot emphasize enough the importance and benefit of strong communication between policy holders and their insurance providers when it comes to worker classification on workers' compensation policies. Errors in payroll reporting or record keeping, or the offering of new services can result in costly surprises that no one likes to get. As we say, knowing about something now is always better than learning about it later!

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