

# ClubPac News

June 2005

## Employee vs. Self-Employed How does it Effect Insurance ?

In the first self-employed article on this issue, we outlined some of the “tests” that are applied to determine if an individual is an Employee or a Self-Employed contractor.

So what difference does it make ?

**Tax Status:** - Obviously there are tax advantages to the individual in the form of business expense deductions that are not available to employees. There is also the administrative cost savings to the Employer. (Income Tax deductions, CPP/QPP payments, UIC payments, Employer Health Taxes, Worker’s Compensation Premiums, etc.)

But Tax Advantages are not the focus of this article and there are some “downsides” or at least “complications” with regards to insurance. We get a lot of frequently asked questions about “who is covered” by insurance policies or who is responsible in the event of a lawsuit and the answer often depends upon the issue of Employment Status:

**Insured:** - Liability policies cover the INSURED in the event that a Third Party files a lawsuit against him/her for either Bodily Injury or Property Damage suffered by the Third Party allegedly due to the INSURED’s negligence.

Most modern policies automatically INCLUDE EMPLOYEES as Insureds in the definition of who is covered by the contract, so if a member is injured while driving a golf cart at the club and claims that the injury was due “negligence” resulting from a failure of the “staff” to properly train him on the use of the cart, what insurance policy applies ?

If the “negligent” individual is a club employee, then the club’s liability policy responds to protect (or pay on behalf) both the club and the employee. If the individual is “self-employed” the club’s policy protects the club, but does not protect the individual. They (as a separate business entity) would require their own liability insurance.

**Tax Liability** – Businesses and their directors can be held personally responsible for unmerited taxes. In the event that one of your “self-employed” subcontractors fails to remit their Income Tax payments and the courts subsequently decide that the individual did not qualify as “self-employed”, then you, as the employer, are responsible to CCRA, UIC, CPP, etc. for all outstanding taxes.

Director’s & Officer’s Liability policies cover this risk, but most General Liability policies do not.

**Employee Injuries** – Most liability policies “exclude” lawsuits brought by employees for injuries sustained on the job. Club’s must either buy Worker’s Compensation (in the

provinces where it is optional) or the employer must buy "Employer's Liability" insurance to protect him/herself.

**Worker's Compensation** - In some provinces, coverage is mandatory for ALL EMPLOYEES. Failure to enroll and pay premiums can result in "back charges" for up to seven years premiums plus interest and penalties.

Self-employed status does not necessarily relieve the "employer" from responsibility. Most provincial Worker's Comp. boards have legislation that allows them to hold the "General Contractor" responsible for the premiums of all the sub-contractors. If you don't pay the premiums you must get "Compliance Certificates" confirming that the sub's are covered or exempt.

**Host Liquor Liability** – A number of clubs claim that their Food & Liquor concessionaire is a self-employed sub-contractor. This may be true; in which case the sub-contractor should hold a Provincial Liquor License and have his/her own liability insurance.

Some provinces will allow a subcontractor to operate under the "Club's" Liquor license, however the club remains 100% responsible for the subcontractor's actions. This responsibility may be considered as "Contractual" and fall outside of the club's insurance protection. In any event, the club's policy does not automatically protect the subcontractor, only the club.

**Property Insurance** – Our Greenskeeper/Food & Beverage Mgr./Club Mgr./ Club Pro, is/are "self-employed independent contractors" does my policy cover their property ?

Unless special provisions have been made (IN WRITING) the simple answer is NO.

If you operated a shopping mall, would you expect your policy to cover the individual retailers' inventories ? Of course not. Contractors' property at the club is no different.

The point of this is that when an individual decides to declare themselves "self-employed", there are more issues than just the tax savings, and if the declaration is incorrect, the "Employer" may be responsible for the shortfalls.

CLUBPAC NEWS is provided at no charge to participants of the CLUBPAC program. It is intended to assist clubs in implementing good loss control practices and to keep them informed of trends and issues in the area of golf industry insurance. Clubs should refer to local "experts and authorities" for specific information about any "technical" or "legislative" issues mentioned.