A common mistake an employer can make is to buy workers compensation insurance in one state while having employees working and/or living in another state. This creates a liability exposure in which the policy you purchased may not have coverage for claims generated by these employees.

One reason for this potential gap in coverage is that an employee is entitled to select the jurisdiction they wish to file their claims based on these three basic principles:

1. An Employee is entitled to file a claim in the state their work is principally localized
2. An Employee is entitled to file a claim in the state where they were injured
3. An Employee is entitled to file a claim in the state where they live

In most cases, the state is the same for all three. For example: An employee’s job is principally localized in the state of Wisconsin, she lives in Wisconsin, and she was injured in Wisconsin. In this scenario, the injured worker’s only available recourse is to file her claim in Wisconsin.

However, consider this alternate example: An employee’s job is principally localized in Wisconsin, he lives in Illinois, and he was injured in Indiana. In this case, the employee could file his claims against the employer in any one of these three states.

Does your policy have coverage for all three states? Unless the policy you purchased specifically lists all three states, you may have a potential gap in your coverage.
WHAT DOES THE POLICY SAY?

Workers compensation policies are bound to the state(s) listed in the policy. Each state has specific language as to what the policy is intended to cover or not cover. The first question you must always ask is if the state(s) listed in the workers compensation policy has jurisdiction over your employees. The criteria to establish jurisdiction is different for each state, but generally there are three basic principles:

1. Is the Employee’s place of work principally localized in the state(s) listed in the policy?
2. Where was the Employee physically standing when the job offer was accepted?
3. Where does the employee live?

This is where it can get tricky: If an employer has physical locations in multiple states, which state is the location from which the employee’s job is principally localized? Most states look at the place of business where employees regularly work, reside, and/or spend a substantial part of their working time as the principal location. If this location is not in a state listed in your workers compensation policy, you may have a problem.

For example: A Wisconsin policy cannot provide coverage for Illinois residents unless that employee’s job is principally localized in Wisconsin. A Wisconsin policy can, however, provide coverage to residents of the state of Wisconsin. Additionally, if the job offer was made in Wisconsin, that further supports an employment relationship between Wisconsin and the worker.

Now let’s toss in another twist. Most states will have extraterritorial provisions for workers injuries occurring outside of the state boundaries under the original state policy!

For example: A Wisconsin employee travels to Illinois and is injured in Illinois. This employee is still entitled to benefits provided under the Wisconsin policy, and injuries such as these are incidental to the Wisconsin policy. However, most policies will only provide such coverage in another state for a limited period of time. In most cases, this is 30 days. Employers with employees out of the state in excess of that time limit should purchase a separate workers compensation policy to cover the work in that state.
To complicate this even more, most states have an Assigned Risk Pool Market for employers who are unable to purchase their workers compensation coverage on the Private Market. While the Risk Pool Market itself could be the subject of an entire article, for the purpose of this article it is important to know these policies are only intended to provide coverage for employees for whom the state has jurisdiction. In addition to the question on jurisdiction, in Wisconsin the courts have determined that a risk pool carrier only pays Wisconsin benefits. An employer may therefore be liable for benefits awarded in other state(s) to the extent those benefits exceed Wisconsin’s, and only for employees who Wisconsin has jurisdiction to provide coverage for.

**WHAT STATE(S) SHOULD BE LISTED?**

We previously mentioned that an employee can potentially elect to file their claim in one of three possible states. This is a potential conflict between what the policy can pay and what the employer may owe their employee. The reason an employee may elect to receive benefits from another state is that the new state may have higher benefits in excess of the state which issued the original policy. In a case like this, the original policy can only pay for benefits from the original state(s) listed in the policy. Benefits above and beyond the original policy are the responsibility of the employer to pay.

The workplace environment is evolving over time and creating new challenges for claim handlers to consider. No longer is the employee locked into working each and every day from the same location. In today’s economy, an employee might handle their work remotely (commonly known as telecommuting). This provides new challenges as to where the employee’s job is principally localized. It is possible to have an employee hired in another state who lives in that state, works remotely in that state, and is injured in that state. In this situation, the employer likely needs to buy a policy for employees who may become injured in this new state. The principal location of the employee’s job is the primary standard. As a practical consideration, this means that an employer will need a new workers compensation policy if an employee is originally hired in one state but moves to another state to perform permanent work activities.

Simply trying to list every state in a policy is not a solution for all states, either — North Dakota, Ohio, Washington, Wyoming, Puerto Rico and the U.S. Virgin Islands are all monopolistic states, which means you cannot buy your insurance on the private market. You must buy a separate policy if you have employees in these states.

Most states have assigned risk pools that are only intended to provide coverage for one jurisdiction. These products are not designed to provide benefits outside the jurisdiction of the pool policy. Assigned risk pool policies may cover employees out of the state for a limited period of time on business, but in most cases those benefits are limited to the original home state which issued the policy. Establishing the injured worker is an employee from the state issuing a policy is also critical because employees with jurisdiction outside the assigned pool state will have no coverage under this type of product.
An important fact for employers to remember is that regardless of whether their policy has coverage for out of state employees, the employer is always on the hook to pay for whatever claims an employee is entitled to under the workers compensation laws for each state. Buying a workers compensation policy simply assigns that responsibility to another party — the insurance company — but workers compensation policies have limitations as to what responsibilities they can accept. This applies to all work injuries, whether they’re covered by a pool policy or a standard workers compensation policy. Again: **Employers always have a responsibility to insure they have adequate coverage.**

**DISCLAIMERS**

You’ll note that we did not cover the issues that factor in to whether an injury is compensable. Compensability is a term to identify whether your employee’s injuries are related to their employment. Determining compensability is a state-specific task of looking at both the statute and case law within that state to determine what is covered. This article is not intended to answer questions on compensability — this is a completely separate topic and must be addressed on its own merits.

Another very important disclaimer is that multiple state claims are highly fact driven and one minor detail could mean the difference of a policy providing coverage or not. Due to this fact, this whitepaper is not intended to be an all-inclusive solution to the problems you may have managing multiple jurisdiction questions for your employees.

These situations require a skilled professional such as your insurance agent, underwriter or claim handler. These people understand both coverage and jurisdictional issues in your state. As an employer, you most likely have knowledge of whether you have employees crossing state lines. (Even employees who live in other states should be examined for coverage gaps.) Many states have an Uninsured Employer’s Fund, a fund that is designed to protect the injured worker in the event that the employer has a gap in coverage. This fund does not protect the employer from their liability, however, as most of these funds have authority to collect any payments directly from the employer. Wisconsin Law specifically provides for personal liability for corporate officers.

If you do have employees crossing state lines, it is highly recommended that you take a second look at whether your policy has coverage for your potential exposure. Take a look at sections 3A and 3C of your workers compensation policy to see what states have been identified as providing coverage under your policy. If you have employees engaged in work activities or living in states not listed in 3A and 3C of your policy, you may have a gap in coverage to review with your agent or other insurance professional.

Society’s knowledge of the important details in the workers compensation field makes a big difference for business owners and their employees. To find out how Society can help your business, visit societyinsurance.com.