



Big "I" Virtual University

Agents vs. Auditors: The Great Insurance Smackdown!

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What Are We Going to Talk About

- Stereotypes
- What Are the Rules
- Responsibilities and Challenges
- What You've Seen Agents Do
- What Agents Have Seen You Do
- Why We Can't ALL Get Along

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Stereotypes

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Stereotypes

- Agents will do whatever is necessary to get business on the books.
- Auditors like to "flex their muscles" and prove they know more than everyone else.

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• Stereotypes

- Agents spend most of their time on the golf course.
- Auditors spend most of their time reading the Scopes

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• Stereotypes

- Every agent votes Republican.
- Every auditor votes Democrat.

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• Stereotypes

- Before agents donate to a charity, they want to know if their name will be printed anywhere.
- Before auditors donate to charity, they make sure they can write it off on their taxes.

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• Stereotypes

- Agents don't know the rules.
- Auditors ignore the rules.

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What Are the Rules

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Who Counts as an "Employee"

Four types of "Employee":

- **Direct:** Depends on entity type
 - Natural Person Employers
 - Legal Person Employers
- **De Jure:** Depends on statute
- **De Facto:** Depends on relationship ("Independent Contractor???)
- **Special Relationship:** Depends on working arrangement

All "employees" must be covered by workers' compensation (based on statute of a particular state).

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Remuneration Includes

<ul style="list-style-type: none"> • Wages/Salaries • Commissions • Bonuses • Overtime • Pay for holidays, vacations, or periods of sickness; • Pay for time not worked • Pay for travel time to or from work or specific job site • Employer payments of amounts otherwise required by law • Contributions to a savings plan or vacation fund required by a union contract 	<ul style="list-style-type: none"> • IRS Qualified Salary Reduction Plan • Employee Savings Plans • Contributions to an IRA made by the employee • Payment on any basis other than time worked • Payment or allowance for tools • Value of housing/lodging • Value of meals • Substitutes for money • Unsubstantiated expense reimbursement
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Remuneration Excludes

<ul style="list-style-type: none"> • Tips and other gratuities • Payments by employer to Group Insurance or Pension Plans • Special rewards for individual invention or discovery • Severance pay • Pay for those on active military duty • Employee discounts 	<ul style="list-style-type: none"> • Expense reimbursements • Money for meals for overtime work • Work uniform allowance • Sick pay paid by a third party • Employer-provided perks
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Special Payroll Considerations

- Sole proprietors and partners
- Executive officers
- Members and managers of an LLC and the founders/organizers of a professional association (PA)

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Governing Classification and Single Enterprise Rule

- The "Governing Classification" is intended to represent the exposure created by the **overall operational** business, not the exposure of each individual employee
- "General Inclusions"
- Most states do not allow the addition or changing of class codes at the time of audit (except in construction)

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Exceptions to the Governing Classification Rule

- "Standard Exception" Classifications
- Interchange of Labor
- "General Exclusion" Classifications
- Multiple Enterprise Rule

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"Standard Exceptions"

Some duties/activities are so common to most business and may be so far outside the operational activities of the entity that employees engaged in these positions are considered exceptions to the governing classification rules

- Clerical Employees- Class Code 8810
- Clerical Telecommuter - Class Code 8871
- Drafting Employees - Class Code 8810
- Salespersons - Class Code 8742
- Drivers - Class Code 7380

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Interchange of Labor

- Interchange of labor rules allow a single employee's payroll to be split between or among several class codes that may be present within the operations
- The applicability of this rule varies by state. Some states allow its use only in the construction, erection or stevedoring classes of business while other states permit the interchange of labor rule to apply to any type of business operation
- The employer is charged based on the employee's actual exposure to injury; however, specific rules must be met

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"General Exclusions"

Some operational activities do not fit into the analogous assignment of the governing classification due to the unexpected existence of such an operation as part of a particular business. These classifications are the opposite of "standard exception" classifications:

- Employees working in aircraft operations;
- Employees performing new construction or alterations;
- Stevedoring employees;
- Sawmill operation employees; and
- Employees working in an employer-owned daycare

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"Multiple Enterprise" Exception

A particular entity may conduct additional operations not usual or customary to such an enterprise; this may allow the insured to qualify for the separation of payroll into multiple classifications

A secondary operation producing a basic premium equal to or higher than the governing class code premium automatically qualifies for separation under the multiple enterprise rule with the only requirement being segregation of payrolls

If the basic premium generated by the secondary operation is less than the governing class code basic premium, four tests must be satisfied:

- 1)
- 2)
- 3)
- 4)

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Responsibilities and Challenges

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Agent's Responsibilities and Challenges

- Hunt down, prospect, propose and place new business.
- Renew as much of their current book of business as possible.
- Have to know every company's underwriting guidelines, appetite and unique coverage grants.
- Need to know extraterritoriality and reciprocity provisions.
- Have to deal with ridiculous COI requests.
- Deal with underwriters.
- No one wants to see them come!

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Auditor's Responsibilities and Challenges

- Confirm the insured is paying the correct premium by reviewing various records and establishing and assigning correct classifications.
- Have to know many state laws.
- Have to keep up on changes to classifications and rules.
- Have to know the difference between Direct, De Facto, De Jure and Special employees.
- Overrule underwriters.
- No one wants to see you come!

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Key Question

Who has the tougher job?

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What You've Seen Agents Do

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What Has the Agent Done Now

- Attempt to misuse a classification hoping no one will catch it.
- Lower the estimated payrolls to lower upfront premium.
- Advising an employer to make his employees "independent contractors"
- Advising an employer to set up a new legal entity to escape a high experience mod.
- Falsifying certificates of insurance (COIs)
- Placing "executive supervisors" in 8810 or 8742

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What Agents Have Seen You Do

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Agents Complaining About Auditors

The nuttiest thing I've found is when I used to write workers' compensation for counties in NC. The Association would report in-home social service assistants as clerical positions because they spent a lot of time in the office doing paperwork. When the auditors went in they accepted the classification of the underwriters despite me hauling out my Scopes manual to "prove" they were wrong.

Pretty hard to compete with an 8810 class code versus the true class code with a \$5 or \$6 rate.

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Agents Complaining About Auditors

We have had very poor experience with auditors telling insureds that **all** of their classification codes were incorrect, or that they **should have a certain coverage**. I have had a number of "discussions" with both auditors and audit supervisors about the proper way to handle something like this. Occasionally the auditor is correct, but a memo or e-mail to the underwriter so the agent has an opportunity to have input would go a long way in making this a less volatile situation. There are times when the agent and underwriter actually did it properly!

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Agents Complaining About Auditors

- We have had to go back and have a number of accounts re-audited when the auditor simply doesn't include everything made available to them or was too lazy to actually look at the documentation presented. We do understand that some insureds are just crappy bookkeepers and bring a shoe box with paid invoices to the meeting.
- We seem to have a difficult time when auditors fail to apply payroll limitations on owners, partners, members, managers and executive officers on Workers' Comp audits.

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Agents Complaining About Auditors

- Agents are always looking out for their clients. Auditors seem always to look out for the insurer. Auditors always seem to rush the process. On more than one occasion I have seen workers' compensation audits where the auditor puts clerical employees in the governing class code even though the work areas were separated by walls and doors. I think that agents and auditors do not trust each other.

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Agents Complaining About Auditors

- Fortunately I have not had any problems with the audit folks from the various carriers over 40 years working with the many divisions of Insanity Mutual Indemnity & Casualty.

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Why We Can't All Get Along

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Remember

- Without agents, you don't have jobs.
- Without premium auditors, agents might "hide" the realities, carriers would not collect the correct premium, and premiums would be HIGHER for everyone.

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How Can We Work Together

- Auditors should go meet the agents in their territory.
- Agents should get auditors involved up front.
- Give the agent a "heads-up" notice when things change.

Don't Take It Personally!!

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