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Multiple state workers' compensation policies

Employers in Australia with working in more than one state must carry Workers Compensation Policies in each state or territory. There is confusion where certain claims will be paid following court decisions and new legislation.

Where companies operate across multiple states, especially where their workers move across states has created confusion over the term “usual work” and where workers’ compensation payouts apply.

This confusion was partially addressed by the Michael Hanns versus Greyhound Pioneer Australia case in 2006. Hanns, an interstate bus driver injured in NSW, started shifts in the ACT, where Greyhound was based, but spent 80% of his work time in NSW. An ACT Supreme Court judge ruled that when there were two usual workplaces the traditional “quantitative” test, which determined a “usual workplace” based on time spent in a state, did not apply, and the test would revert to where they “habitually” or “customarily” work, which in Hanns’ case was the ACT. Two subsequent decisions in the ACT and Western Australia have handed down similar rulings.

Still a need for multiple policies

Andrew Muller, the Canberra Managing Partner of law firm Moray & Agnew Lawyers, agrees the issue is creating confusion for brokers and employers nationally. “The great difficulty they have is when an employer comes to them for cover and they’re trying to work out what the pattern of the workforce’s engagement over the next 12 months is,” he says.

“People thought, and brokers thought, they were able to have one workers compensation policy when they previously had three. That’s just not the case.

“There’s been a bit of confusion about what ‘usual work’ means,” he adds. “That’s been the biggest challenge. There’s even difference of opinion about how it should be applied across regulatory bodies in different states. There’s a lot of misinformation about there about what it means and how it’s going to be applied.”

Muller says much of the confusion was created when harmonisation legislation was introduced. He says that initially it was pitched as removing the need to have a number of workers’ compensation policies. “That was never going to be the case,” he says. “Chances are you’re still going to need more than one policy. There was an expectation in the market place that it was going to do away with that. That was never intended.”

States and territories look to tweak test

Muller also says that working out premiums is challenging. “How do you split wages? Which wages go to the ACT and NSW? Guys in the building industry, particularly, can spend 12 months on the job in the territory and next year is back working on a project in NSW,” he says.

“That whole premium-setting issue is still problematic. Legislation doesn’t really deal with that. It deals with what jurisdiction is going to be attached do.”

Foreign Companies Working In Australia

The most frequent problem we encounter is a foreign company has one Australian Office so they insure all Workers in that State said AIS Director, Brendon Davis. This is worse in New South Wales where companies frequently fail to identify the distinction between NSW and the Australian Capital Territory. Likewise offshore North West Shelf work can involve a combination of Western Australian and Northern Territory workers compensation exposures; or it could in some circumstances expose employers to Seafarers Liability.



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Foreign Companies with temporary workers in Australia, especially those engaged short term on some of our major energy projects have also had serious issues with Workers Compensation. There have been instances where the parent company has had uninsured Workers Compensation losses as they hadn't understood the workers had entitlements under the Australian system. These liabilities can be exacerbated where additional workers benefits accrue under an Enterprise Bargaining Agreement (EBA) which can add several hundred thousand dollars onto a companies uninsured employers liability.

For more information you can contact AIS Insurance using the form at : www.457.net.au/WorkersComp

Brendon Davis

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Note:

This information sheet is written by Brendon Davis of AIS Insurance Brokers. It is provided as General Advice only, you should refer to AIS at Insure@AISinsurance.com.au for specific advice for your needs.

AIS provide expert Workers Compensation Insurance Worldwide including statutory medical insurance in Australia and worldwide medical insurance for Expatriates.