

Chapter 8.00: Office of Investigations

Section

- 8.01: Scope and Authority
- 8.02: Definitions
- 8.03: Issuance of Stop Work Orders
- 8.04: Appeal of a Stop Work Order
- 8.05: Fines
- 8.06: Exemption of Corporate Officers or Directors
- 8.07: Workers' Compensation Policies for Sole Proprietors
- 8.08: Insurance for Out of State Employers – Form 154

8.01: Scope and Authority

~~(1)~~ Pursuant to M.G.L. c. 152, § 25C, the ~~Division~~ Department of Industrial Accidents (“DIA”) Office of Investigations shall investigate those businesses, organizations or other entities that employ one or more persons, be it full or part-time, as defined by M.G.L. c. 152, § 1 and determine if said business, organization or entity has obtained the proper workers' compensation insurance coverage. If the Office of Investigations determines that any business, organization or other entity has failed to obtain a workers' compensation policy for its employees then a Stop Work Order (“SWO”) shall be issued and appropriate fines and penalties shall be levied. Further, the Director of the Department is authorized under M.G.L c. 152, §1(4) to promulgate regulations regarding workers' compensation insurance coverage requirements and elections for certain officers and directors of corporations.

~~(2) Pursuant to MGL c. 152, § 1 (4), the DIA shall grant exemptions from the provisions of the workers' compensation act (MGL c. 152) to certain corporate officers and directors who own at least 25% of the issued and outstanding shares of a corporation. Further, sole proprietors and partners in a legal partnership may elect to be an employee and obtain workers' compensation insurance coverage for themselves.~~

8.02: Definitions

For the purposes of 452 CMR 8.00 the following definitions will be used:

Corporate Director - a person elected or appointed to sit on a board that manages the affairs of a particular corporation.

Corporate Officer - a person who holds the designated position of president, vice president, treasurer, secretary, etc. for a particular corporation and is so listed in the articles of organization or in the annual report filed with the Secretary of the Commonwealth.

Duly Authorized Rating Organization - for the purposes of 452 CMR 8.00, the duly authorized rating organization shall be the organization recognized pursuant to M.G.L. c. 152, § 52C to fulfill those statutory duties delineated therein or its successor.

Employee - for purposes of 452 CMR 8.00, the definition of employee shall be that indicated in M.G.L. c. 152, § 1(4).

Employer - for purposes of 452 CMR 8.00, the definition of employer shall be that indicated in M.G.L. c. 152, § 1 (5).

Fine - a fine shall refer to those fines delineated in MGL c. 152, § 25C.

Insurance Carrier - for purposes of 452 CMR 8.00, an insurance carrier shall refer to an insurer as defined by in M.G.L. c. 152, § 1 (7).

Investigator - a person designated by the ~~commissioner~~ Director of the ~~Division of Industrial Accidents~~ DIA to enforce the provisions of M.G.L. c. 152, § 25A and § 25C.

Stop Work Order (“SWO”) - a citation issued to ~~a business, organization or other entity that employs persons as defined by MGL c. 152, § 1(5) and an employer that~~ has failed to ~~obtain~~ provide evidence of workers' compensation insurance coverage as prescribed by M.G.L. c. 152, § 25A. A ~~Stop Work Order~~ SWO shall be issued by an ~~agent~~ investigator duly authorized by the ~~commissioner~~ Director of the ~~Division of Industrial Accidents~~ DIA.

8.03: Issuance of Stop Work Orders

Upon discovery that an employer is in violation of M.G.L. c. 152, § 25A, the DIA shall issue a ~~Stop Work Order (SWO)~~ SWO and serve it upon the employer. Service of the SWO is proper if it is served upon the employer personally, if the employer is an individual; upon a corporate officer, if the employer is a corporation; or upon a representative or agent of the employer. The SWO may also be properly served by leaving a copy of the SWO at the employers' last and usual place of business. The date of service shall be noted on the SWO and said date shall be used to calculate fines and penalties pursuant to M.G.L. c. 152, § 25C.

8.04: Appeal of a Stop Work Order

Upon written request to the DIA, an employer who is aggrieved by the issuance of a ~~Stop Work Order~~ SWO may appeal said order on its merits. A hearing will be granted per M.G.L. c. 152, § 25C(2). The appeal must be filed with the DIA no later than 10 days from the date the ~~Stop Work Order~~ SWO was served. The aggrieved employer may, at the time of the hearing, provide documents or other materials that support its position. An employer that appeals a SWO may continue to operate their business pending a final agency disposition.

8.05: Fines

Fines levied against an employer who has been properly served with a ~~Stop Work Order SWO by the Office of Investigations of the Department of Industrial Accidents~~ are not subject to appeal or review.

8.06: Exemption of Corporate Officers or Directors

(1) Pursuant to MGL c. 152, § 1(4), a corporate officer or director who owns at least 25% of the issued and outstanding stock in a corporation may elect to be exempted from the provisions of M.G.L. c. 152. Said exemption may only be exercised if the corporate officer(s) or director(s) submits a waiver of his/her rights to any claim as delineated in M.G.L. c. 152. This waiver shall be in the form of an affidavit promulgated by the ~~Division of Industrial Accidents (DIA)~~ DIA and known as **Form 153 - Affidavit of Exemption for Certain Corporate Officers** and may be submitted electronically.

(2) To be valid, all corporate officers and directors who own 25 % or more of the issued and outstanding shares of the corporation must be named on the Form 153. There can be no more than four (4) corporate officers or directors named on the Form 153. All corporate officers or directors named on the Form 153 must attach their signature(s) to the document for it to be considered valid. The information contained on the Form 153 provided by the corporate entity will be checked against the articles of incorporation and the annual report on file with the Secretary of the Commonwealth. Should the information contained in the Form 153 not match the information contained in the documents on file with the Secretary of the Commonwealth, the Form 153 shall be rejected and the exemption will not apply.

(3) Not all corporate officers and directors need to exercise their right of exemption from the provisions of M.G.L. c. 152 for the exemption to be valid. If one or more of the corporate officers or directors who are eligible for the exemption decide not waive their rights to workers' compensation, they must do so by marking the box located beneath their signature on the Form 153 which states "I wish not to exercise my right of exemption." If any of the corporate officers or directors have signed the Form 153 and indicated that they will not exercise the right of exemption, then workers' compensation coverage must be in place for those non-exempted corporate officers or directors per M.G.L. c. 152, § 25A. Failure to do so shall be deemed a violation of the statute and the corporation will be subject to the fines and penalties delineated in M.G.L. c. 152, § 25C. Whether or not an eligible corporate officer or director exercises their right of exemption, ALL eligible officers or directors must sign-attach their signatures to the Form 153 as a condition of ~~for~~ the form to be being approved by the DIA.

(4) Upon review and approval of the Form 153 by the DIA, the corporate officer(s) or director(s) named therein shall be deemed exempt from the provisions of M.G.L. c. 152. If the corporation carries ~~worker's~~ workers' compensation insurance, the corporation must provide a copy of the approved Form 153 to the insurance carrier as proof that the named corporate officer(s) or director(s) have been properly exempted and that workers' compensation coverage is no longer required for those persons. Where the Form 153 is submitted in paper form, The-the corporation will be provided a copy of the approved Form 153; a self-addressed stamped return envelope

should be included with the Form 153 submission [for this purpose](#). An approved Form 153 will be marked as such in the upper right hand corner of the form and will indicate the date of approval and the initials of the commissioner of the DIA and/or his designee. ~~Upon notification to the insurance carrier that said corporate officer(s) or director(s) has exercised his or her right of exemption, the salary and/or compensation of the exempted corporate officer(s) or director(s) shall no longer be considered in calculating the premium for the corporation's workers' compensation policy.~~ Notwithstanding any earlier date indicated on an approved Form 153, the effective date of the requisite changes to any existing workers' compensation policy shall be either

- a) the next policy effective date following the carrier's receipt of the approved Form 153, or
- b) the day following the carrier's receipt of the approved Form 153 along with a written request that the election be made effective mid-term.

~~All such written requests must be on the employer's corporate letterhead and signed by a corporate officer.~~

(5) If, after an approved Form 153 has been submitted to a carrier, one or more exempted officer(s) or director(s) chooses to be covered under the current ~~worker's~~ workers' compensation policy, he or she must submit a written or electronic; signed request on corporate letterhead to the carrier. Coverage will be made effective for that officer(s) or director(s) as of the day after receipt of the written request. Such coverage shall remain in effect until completion of the current policy term. A new Form 153 must be submitted to the DIA and then sent to the carrier.

(6) A copy of the approved Form 153 must be submitted to the insurance carrier on an annual basis, prior to the renewal of any existing policy, as affirmation that the statements contained therein remain in effect. If the approved Form 153 is not submitted to the carrier the corporate officers and directors shall be covered under the renewal policy. ~~and the salary or compensation of those officers and directors shall be included in the premium calculation.~~

(7) If the corporate officer(s) or director(s) who have exercised their right of exemption are the only employees of the corporation, said corporation may legally operate without workers' compensation insurance. However, should that same corporation at any time employ persons other than the named corporate officers or directors on the Form 153, workers' compensation coverage must be in place for those employees per M.G.L. c. 152, § 25A. Workers' Compensation ~~compensation~~ insurance coverage must also be in place if that same corporation hires others (such as subcontractors) for whom it may be required to provide coverage pursuant to M.G.L. c. 152, § 18. Failure to do so shall be deemed a violation of the statute, and the corporation will be subject to the fines and penalties delineated in M.G.L. c. 152, § 25C.

(8) Should the status of any or all of the corporate officers or directors named on an approved Form 153 change, the corporation must submit a new Form 153 to the DIA and notify the insurance carrier in writing of the change in corporate status within ten calendar days of said change. A change in corporate status shall include the reduction in ownership share of any one exempted corporate officer or director to less than 25% of issued and outstanding stock; the resignation of any exempted corporate officer or director; the addition of an eligible corporate officer or director; or other changes that make a corporate officer or director ineligible for the

exemption under M.G.L. c. 152, § 1(4). If any corporate officer or director has their interest in the corporation reduced to below 25%, but still maintains a position in the corporation, workers' compensation coverage must be obtained for that corporate officer or director as they would no longer be eligible for the exemption. Failure to do so shall be deemed a violation of the statute and the corporation will be subject to the fines and penalties delineated in M.G.L. c. 152, § 25C.

(9) A corporate entity may employ persons other than corporate officers or directors who have exercised his/her right of exemption. If the corporate entity does so, valid workers' compensation coverage must be in place to provide benefits to any employees in accordance with M.G.L. c. 152. ~~However, for the purpose of calculating the workers' compensation policy premium, the salary of any properly exempted corporate officer or director should not be included.~~

8.07: Workers' Compensation Policies for Sole Proprietors

(1) Pursuant to St. 2002, c. 169 and M.G.L. c. 152, § 1(4), a sole proprietor or the partners of a legal partnership may elect to be an employee and obtain coverage under a workers' compensation insurance policy.

(2) If a sole proprietor or partner wants to be covered as an employee under a workers' compensation insurance policy, he/she must submit a written or electronic request directly to the carrier when a policy is in place or is going to be issued through the voluntary market or to the duly authorized rating organization established by M.G.L. c. 152, § 52C if the policy is going to be assigned through the assigned risk pool. The sole proprietor or partner must reaffirm in writing, or by electronic means, their decision to be covered ~~their right of inclusion~~ as an employee on their workers' compensation policy to the insurance carrier annually and prior to the renewal date of the policy.

(3) The effective date of coverage for the sole proprietor or partner shall be either the next policy effective date following the carrier's receipt of a written request from the sole proprietor or partner, or

- a) the day following the carrier's receipt of a written request that the election for coverage be made effective mid-term.

All such written requests must be on company letterhead and signed by the sole proprietor or partner. Once electing to be covered under a workers' compensation insurance policy, no sole proprietor or partner may opt out of said coverage until the completion of the current policy term.

(4) Pursuant to M.G.L. c. 152, § 25A, sole proprietors and partnerships are required to provide workers' compensation insurance coverage for their employees. Under M.G.L. c 152, § 1(4), a sole proprietor or partner is given the option to be an employee and be covered under a workers' compensation insurance policy. If a sole proprietor or partnership obtains a workers' compensation insurance policy without specifically electing coverage as described in 452 CMR 8.07 for the sole proprietor or for each or any partner, the sole proprietor and partners shall not be covered under that policy.

8.08: Insurance for Out of State Employers – Form 154

Employers located in other states but conducting business and/or employing workers in Massachusetts must have an applicable Massachusetts workers' compensation insurance policy for their employees. Coverage will not be valid if Massachusetts is not endorsed in section 3A or 3C of the information page of a workers' compensation insurance policy. If Massachusetts is not endorsed in section 3A of the information page but coverage exists in Massachusetts under section 3C, an employer's insurance carrier must file a Form 154 with the Office of Investigations upon request of said office.