

452 CMR 8.00: OFFICE OF INVESTIGATIONS

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8.01: SCOPE AND AUTHORITY

PURSUANT TO M.G.L. C. 152, § 25C, THE DEPARTMENT OF INDUSTRIAL ACCIDENTS (DIA) INVESTIGATIONS SHALL INVESTIGATE THOSE BUSINESSES, ORGANIZATIONS OR OTHER ENTITIES OR MORE PERSONS, BE IT FULL OR PART-TIME, AS DEFINED BY M.G.L. C. 152, § 1 AND DETERMINE IF ANY BUSINESS, ORGANIZATION OR ENTITY HAS OBTAINED THE PROPER WORKERS' COMPENSATION INSURANCE COVERAGE. IF THE OFFICE OF INVESTIGATIONS DETERMINES THAT ANY BUSINESS, ORGANIZATION OR ENTITY HAS FAILED TO OBTAIN A WORKERS' COMPENSATION POLICY FOR ITS EMPLOYEES, A STOP WORKORDER (SWO) SHALL BE ISSUED AND APPROPRIATE FINES AND PENALTIES SHALL BE LEVIED. 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 ENFORCE THEM AGAINST CORPORATE OFFICERS AND DIRECTORS OF CORPORATIONS.

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 A PARTICULAR CORPORATION.

CORPORATE OFFICER - A PERSON WHO HOLDS THE DESIGNATED POSITION OF PRESIDENT, VICE PRESIDENT, TREASURER, SECRETARY, OR CONTROLLER OF A PARTICULAR CORPORATION AND IS SO LISTED IN THE ARTICLES OF INCORPORATION OR IN THE ANNUAL REPORT FILED WITH THE SECRETARY OF THE COMMONWEALTH.

DULY AUTHORIZED RATING ORGANIZATION - FOR THE PURPOSE OF 452 CMR 8.00 THE DULY AUTHORIZED RATING ORGANIZATION SHALL BE THE ORGANIZATION RECOGNIZED PURSUANT TO M.G.L. C. 152, § 1(4) WHICH FULFILL THOSE STATUTORY DUTIES DELINEATED THEREIN OR ITS SUCCESSOR.

EMPLOYEE - FOR PURPOSES OF 452 CMR 8.00, THE DEFINITION OF EMPLOYEE SHALL BE THAT IN M.G.L. C. 152, § 1(4).

EMPLOYER - FOR THE PURPOSE OF 452 CMR 8.00, THE DEFINITION OF EMPLOYER SHALL BE THAT IN M.G.L. C. 152, § 1(5).

FINE - A FINE SHALL REFER TO THOSE FINES DELINEATED IN M.G.L. C. 152, § 25C.

INSURANCE CARRIER - FOR THE PURPOSE OF 452 CMR 8.00 AN INSURANCE CARRIER SHALL BE AS DEFINED IN M.G.L. C. 152, § 1(7).

INVESTIGATOR - A PERSON DESIGNATED BY THE DIRECTOR OF THE DIA TO ENFORCE THE PROVISIONS OF M.G.L. C. 152, §§ 25A AND 25C.

STOP WORKORDER (SWO) - A CITATION ISSUED TO AN EMPLOYER THAT HAS FAILED TO PROVIDE FOR WORKERS' COMPENSATION INSURANCE COVERAGE AS PRESCRIBED BY M.G.L. C. 152, § 25A. A STOP WORKORDER SHALL BE ISSUED BY AN INVESTIGATOR DULY AUTHORIZED BY THE DIRECTOR OF THE DIA.

8.03: ISSUANCE OF STOP WORKORDERS

UPON DISCOVERY THAT AN EMPLOYER IS IN VIOLATION OF M.G.L. C. 152, § 25A, THE DIA SHALL SERVE A 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 IS PROPERLY SERVED BY LEAVING A COPY OF THE SWO AT THE EMPLOYER'S LAST AND USUAL PLACE OF BUSINESS. THE DATE OF SERVICE SHALL BE NOTED ON THE SWO AND SAID DATE SHALL BE USED TO CALCULATE PENALTIES PURSUANT TO M.G.L. C. 152, § 25C.

8.04: APPEAL OF A STOP WORKORDER

UPON WRITTEN REQUEST TO THE DIA, AN EMPLOYER WHO IS AGGRIEVED BY THE ISSUANCE OF A SWO MAY APPEAL SAID ORDER ON ITS MERITS. A HEARING WILL BE GRANTED PER M.G.L. C. 152, § 25C. AN APPEAL MUST BE FILED WITH THE DIA NO LATER THAN TEN DAYS FROM THE DATE THE SWO WAS ISSUED. THE AGGRIEVED EMPLOYER MAY, AT THE TIME OF THE HEARING, PROVIDE DOCUMENTS OR OTHER EVIDENCE TO SUPPORT ITS POSITION. AN EMPLOYER THAT APPEALS A SWO MAY CONTINUE TO OPERATE PENDING A FINAL AGENCY DISPOSITION.

8.05: FINES

FINES LEVIED AGAINST AN EMPLOYER WHO HAS BEEN PROPERLY SERVED WITH A SWO AND DOES NOT APPEAL TO APPEAL OR REVIEW.

8.06: EXEMPTION OF CORPORATE OFFICERS OR DIRECTORS

(1) PURSUANT TO M.G.L. 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 OR HER RIGHTS TO ANY CLAIM AS DELINEATED IN M.G.L. C. 152, § 1(4). THE WAIVER SHALL BE IN THE FORM OF AN AFFIDAVIT PROMULGATED BY THE 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 OUTSTANDING SHARES OF THE CORPORATION MUST BE NAMED ON THE FORM 153. THERE MUST BE NO MORE THAN FOUR CORPORATE OFFICERS OR DIRECTORS NAMED ON THE FORM 153. ALL CORPORATE OFFICERS AND DIRECTORS NAMED ON THE FORM 153 MUST ATTACH THEIR SIGNATURES TO THE DOCUMENT. THE DOCUMENT IS CONSIDERED VALID. THE INFORMATION CONTAINED ON THE FORM 153 PROVIDED BY THE CORPORATION WILL BE CHECKED AGAINST THE ARTICLES OF INCORPORATION AND THE ANNUAL REPORT OF THE CORPORATION TO 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 UNDER 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 TO WAIVE THEIR RIGHT OF EXEMPTION, THEY MUST DO SO BY MARKING THE BOX LOCATED BENEATH THEIR NAME 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 THEIR RIGHT OF EXEMPTION, THEN WORKERS' COMPENSATION COVERAGE MUST BE IN PLACE FOR THOSE CORPORATE OFFICERS OR DIRECTORS PER M.G.L. C. 152, § 25A. FAILURE TO DO SO SHALL CONSTITUTE A VIOLATION OF THE STATUTE AND THE CORPORATION WILL BE SUBJECT TO THE FINES AND PENALTIES PROVIDED 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 ATTACH THEIR SIGNATURES TO THE FORM 153 AS A CONDITION OF THE FORM BEING APPROVED BY THE DIA.

8.06: CONTINUED

(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, § 18. IF A CORPORATION CARRIES WORKERS' COMPENSATION INSURANCE, THE CORPORATION MUST PROVIDE 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 REQUIRED FOR THOSE PERSONS. WHERE THE FORM 153 IS SUBMITTED IN PAPER FORM, THE CORPORATION MUST PROVIDE A COPY OF THE APPROVED FORM 153; A SELF-ADDRESSED STAMPED RETURN ENVELOPE MUST BE INCLUDED WITH THE FORM 153 SUBMISSION FOR THIS PURPOSE. AN APPROVED FORM 153 MUST BE MARKED AS SUCH IN THE UPPER RIGHT HAND CORNER OF THE FORM AND WILL INDICATE THE EFFECTIVE DATE AND THE INITIALS OF THE DIRECTOR OF THE DIA AND/OR HIS OR HER DESIGNEE. NOTWITHSTANDING AN EARLIER DATE INDICATED ON AN APPROVED FORM 153, THE EFFECTIVE DATE OF THE REQUEST FOR 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.

(5) IF, AFTER AN APPROVED FORM 153 HAS BEEN SUBMITTED TO A CARRIER, ONE OR MORE CORPORATE OFFICER(S) OR DIRECTOR(S) CHOOSES TO BE COVERED UNDER THE CURRENT 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 DATE OF RECEIPT OF THE WRITTEN REQUEST. SUCH COVERAGE SHALL REMAIN IN EFFECT UNTIL THE END 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 WITH EACH RENEWAL BASIS, PRIOR TO THE RENEWAL OF ANY EXISTING POLICY, AS AFFIRMATION THAT THE STATUS OF THE CORPORATE OFFICERS AND DIRECTORS REMAIN IN EFFECT. IF THE APPROVED FORM 153 IS NOT SUBMITTED TO THE CARRIER WITH THE RENEWAL, CORPORATE OFFICERS AND DIRECTORS SHALL BE COVERED UNDER THE RENEWAL POLICY.

(7) IF THE CORPORATE OFFICER(S) OR DIRECTOR(S) WHO HAVE EXERCISED THEIR RIGHT OF EXEMPTION ARE ONLY EMPLOYEES OF THE CORPORATION, SAID CORPORATION MAY LEGALLY OPERATE WITHOUT WORKERS' COMPENSATION INSURANCE. HOWEVER, SHOULD THAT SAME CORPORATION AT ANY TIME EMPLOY 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 INSURANCE COVERAGE MUST ALSO BE IN PLACE IF THAT SAME CORPORATION EMPLOYS OTHERS (SUCH AS SUBCONTRACTORS) FOR WHOM IT MAY BE REQUIRED TO PROVIDE COVERAGE UNDER M.G.L. C. 152, § 18. FAILURE TO DO SO SHALL BE DEEMED A VIOLATION OF THE STATUS OF THE CORPORATION WILL BE SUBJECT TO THE FINES AND PENALTIES DELINEATED IN M.G.L. C. 152, § 18.

(8) SHOULD THE STATUS OF ANY OR ALL OF THE CORPORATE OFFICERS OR DIRECTORS NAMED ON THE FORM 153 CHANGE, THE CORPORATION MUST SUBMIT A NEW FORM 153 TO THE DIA AND THE INSURANCE CARRIER IN WRITING OF THE CHANGE IN CORPORATE STATUS WITHIN TEN BUSINESS DAYS OF THE CHANGE. A CHANGE IN CORPORATE STATUS SHALL INCLUDE THE REDUCTION IN OWNERSHIP OF AN EXEMPTED CORPORATE OFFICER OR DIRECTOR TO LESS THAN 25% OF ISSUED AND OUTSTANDING SHARES; THE RESIGNATION OF ANY EXEMPTED CORPORATE OFFICER OR DIRECTOR; THE ADDITION OF A NEW CORPORATE OFFICER OR DIRECTOR; OR OTHER CHANGES THAT MAKE A CORPORATE OFFICER OR DIRECTOR NO LONGER EXEMPTED UNDER M.G.L. C. 152, § 1(4). IF ANY CORPORATE OFFICER OR DIRECTOR HAS THE STATUS OF AN EXEMPTED CORPORATE OFFICER OR DIRECTOR REDUCED TO BELOW 25%, BUT STILL MAINTAINS A POSITION IN THE CORPORATION, WORKERS' COMPENSATION COVERAGE MUST BE OBTAINED FOR THAT CORPORATE OFFICER OR DIRECTOR. SUCH A CORPORATE OFFICER OR DIRECTOR NO LONGER BE ELIGIBLE FOR THE EXEMPTION. FAILURE TO DO SO SHALL BE DEEMED A VIOLATION OF THE STATUS OF THE CORPORATION WILL BE SUBJECT TO THE FINES AND PENALTIES DELINEATED IN M.G.L. C. 152, § 18.

8.06: CONTINUED

(9) A CORPORATE ENTITY MAY EMPLOY PERSONS OTHER THAN CORPORATE OFFICERS OR DIRECTORS WHO HAVE EXERCISED HIS OR HER RIGHT OF EXEMPTION. IF THE CORPORATE ENTITY DOES SO, WORKERS' COMPENSATION COVERAGE MUST BE IN PLACE TO PROVIDE BENEFITS TO ANY EMPLOYEES IN ACCORDANCE WITH M.G.L. C. 152.

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 PARTNER 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 OR SHE MUST SUBMIT A WRITTEN OR ELECTRONIC REQUEST TO THE CARRIER WHEN A POLICY IS IN PLACE OR IS GOING TO BE ISSUED THROUGH THE VOLUNTARY RISKPOOL OR THE DULY AUTHORIZED RATING ORGANIZATION ESTABLISHED BY M.G.L. C. 152, § 52C IF THE POLICY IS TO BE ASSIGNED THROUGH THE ASSIGNED RISKPOOL. THE SOLE PROPRIETOR OR PARTNER MUST SUBMIT THIS WRITING, OR BY ELECTRONIC MEANS, THEIR DECISION TO BE COVERED AS AN EMPLOYEE UNDER A WORKERS' COMPENSATION POLICY TO THE INSURANCE CARRIER ANNUALLY AND PRIOR TO THE RENEWAL OF THE POLICY.

(3) THE EFFECTIVE DATE OF COVERAGE FOR THE SOLE PROPRIETOR OR PARTNER SHALL BE THE POLICY EFFECTIVE DATE FOLLOWING THE CARRIER'S RECEIPT OF A WRITTEN REQUEST FROM THE SOLE PROPRIETOR OR PARTNER, OR THE DAY FOLLOWING THE CARRIER'S RECEIPT OF A WRITTEN REQUEST FROM THE SOLE PROPRIETOR OR PARTNER. 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, A SOLE PROPRIETOR OR PARTNER MAY OPT OUT OF SAID COVERAGE UNTIL THE COMPLETION OF THE POLICY TERM.

(4) PURSUANT TO M.G.L. C. 152, § 25A, SOLE PROPRIETORS AND PARTNERSHIPS ARE REQUIRED TO OBTAIN WORKERS' COMPENSATION INSURANCE COVERAGE FOR THEIR EMPLOYEES. UNDER M.G.L. C. 152, § 25A, 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 DOES NOT OBTAIN A WORKERS' COMPENSATION INSURANCE POLICY WITHOUT SPECIFICALLY ELECTING COVERAGE AS DESCRIBED IN SECTION 8.07 FOR THE SOLE PROPRIETOR OR FOR EACH OR ANY PARTNER, THE SOLE PROPRIETOR AND PARTNERSHIP SHALL 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 PERSONS 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 IN SECTION 3C, AN EMPLOYER'S INSURANCE CARRIER MUST FILE A FORM 154 WITH THE DEPARTMENT OF INDUSTRIAL ACCIDENTS UPON REQUEST OF SAID OFFICE.

REGULATORY AUTHORITY

452 CMR 8.00: M.G.L. C. 152, § 1(4).