

**How to Implement
the "Contractor Proof" Provision
of the Workers' Compensation Reform Act
Act 44 of 1993
Effective August 31, 1993**

The Workers' Compensation Reform Act was signed into law as Act 44 of 1993 by Acting Governor Mark Singel on July 2. The new law takes effect on August 31.

Included in the act is a provision that requires all municipalities that issue building permits to require proof of workers' compensation insurance prior to issuing a building permit to a contractor or to require an affidavit stating that the contractor does not employ other individuals, and therefore, is not required to carry workers' compensation insurance. **An affidavit, by statutory definition, must be notarized.**

The building permit

Under the act, each municipality must modify its building permit to include the name of the contractor, workers' compensation policy number, the name of the insurance company, and the contractor's federal or state employer identification number (EIN), in addition to any information required by the municipality in its ordinance. If the contractor signs an affidavit stating that he has no employees and is not required to carry workers' compensation insurance, the building permit must then state the contractor's federal or state employer identification number and a notation that the contractor has no other employees and does not carry workers' compensation insurance and that the contractor is not permitted to employ any individuals to perform work under the building permit.

As proof of insurance, the township should require the contractor to supply either directly or through the contractor's insurer or agent a **workers' compensation certificate**, which includes the effective date of the coverage and the signature of the insurer. **This certificate must be kept on file with the building permit.**

A sample addendum to your building permit application is enclosed. A copy of this form or similar document could be attached as an addendum to your township's current building permit or the information incorporated into the form when the township prints a new building permit. This form is a sample only. Please be sure to consult your township solicitor for guidance in complying with this requirement of the law. The township is required to obtain all information on Part A of the form as part of the building permit. If a contractor is exempt from providing workers' compensation insurance coverage, the affidavit of exemption section (Part B) must be completed and notarized.

Applications by non-contractors

Act 44 does not address building permit applications for non-contractors. There is nothing in the act or in the court decisions that offers guidance to townships on issuing building permits to property owners who may or may not hire a contractor to perform some or all of the work. Under Act 44, the following seems to be clear:

- Property owner applicants are not "contractors" within the meaning of the Workers' Compensation Law.
- The language of the act requiring townships to obtain certificates of workers' compensation coverage refers only to "contractors".

We conclude, therefore, that townships are not required to obtain such certification from a property owner as a pre-condition to issuing a building permit.

(over)

May a township require such certification from a non-contractor property owner? Without this law, townships' power to inquire into or enforce the workers' compensation obligations of private parties is highly doubtful. Act 44 establishes a responsibility for contractors only. Therefore, requiring workers' compensation coverage by non-contractor applicants would be an intrusion by the township into an area where it has no legal authority.

It is our conclusion that workers' compensation coverage certification may not be required of non-contractor applicants. We recognize that this interpretation makes the implementation of an already burdensome law even more awkward for townships. Further, in the absence of legislative or judicial clarification, this law is susceptible to divergent interpretations. **You should consult with your township solicitor before taking action.**

Expiration or cancellation of insurance

Contractors must notify their workers' compensation insurer of each municipality in which they will be seeking building permits as a workers' compensation policy certificate holder. Insurers issuing policies that name a municipality as a certificate holder must notify that municipality of the expiration or cancellation of any such policy of insurance within three working days of the date of expiration or cancellation. Upon the receipt of such notification from the insurer, **the township must issue a stop-work order to a contractor who is performing work.**

Also, if a township receives actual notice that a building permittee who has filed an affidavit of exemption from workers' compensation insurance has hired employees to perform work under the building permit and has not obtained the required insurance, the township must issue a stop-work order. **The stop work-order shall stay in effect until proper workers' compensation coverage is obtained for all work performed under the building permit and proper documentation of such coverage is received by the township.**

Contractors working for a township

Under Act 44 and Section 805 of the Township Code, the same provisions that apply to contractors seeking building permits **apply to any contractor performing work for a public body or municipality.** All contractors and subcontractors must provide proof of workers' compensation insurance to the township effective for the duration of the contract. Upon receiving notice that the contractor's workers' compensation insurance has expired or been canceled or that the affidavit of exemption is no longer accurate, the township shall declare the contract to be null and void.

Liability for enforcement

All responsibility for notifying the township of the expiration or cancellation of a contractor's workers' compensation insurance rests with the contractor and his insurance carrier. **The law specifically states that there is no municipal liability for the enforcement of this provision.**

The term "proof of insurance" means a certificate of insurance or self-insurance demonstrating current coverage and compliance with the requirements of this act. Proof of insurance is not required if:

- the contractor qualifies for an exemption for religious reasons (such as the Amish) under the Workers' Compensation Act;
- the contractor is not required to provide workers' compensation insurance because he does not have employees; or
- the property owner is performing his own work.

Workers' Compensation Insurance Coverage Information
(attach to building permit application)

A. The applicant is

A contractor within the meaning of the Pennsylvania Workers' Compensation Law

Yes No

If the answer is "yes," complete Sections B and C below as appropriate.

B. Insurance Information

Name of Applicant _____

Federal or State Employer Identification No. _____

Applicant is a qualified self-insurer for workers' compensation.

Certificate attached

Name of Workers' Compensation Insurer _____

Workers' Compensation Insurance Policy No. _____

Certificate attached

Policy Expiration Date _____

C. Exemption

Complete Section C if the applicant is a contractor claiming exemption from providing workers' compensation insurance.

The undersigned swears or affirms that he/she is not required to provide workers' compensation insurance under the provisions of Pennsylvania's Workers' Compensation Law for one of the following reasons, as indicated:

Contractor with no employees. **Contractor prohibited by law from employing any individual to perform work pursuant to this building permit unless contractor provides proof of insurance to the township.**

Religious exemption under the Workers' Compensation Law.

Subscribed and sworn to before me this
_____ day of _____ 19 _____

(Signature of Notary Public)

My commission expires: _____

(Seal)

Signature of applicant _____
Address _____

County of _____
Municipality of _____