

Does an HOA without Employees Really Need Workers' Compensation Insurance?

The topic of workers' compensation insurance in an HOA is consistently part of conversations amongst board members and community managers. Most commonly, that conversation starts with a question, "Why are we paying for workers' compensation insurance when we don't have employees?" While that is a reasonable question, there is a reason behind the purchase.

Only licensed and insured contractors should be hired for services to an HOA. What if the board or the management company rehires a contractor that has worked for the community multiple times, and fails to verify whether the contractor is current on their insurance coverage? It is possible the contractor missed payments or forgot to renew their policy. A low-cost "If-Any" Workers' Compensation policy can backstop errors made in this scenario and save the working relationships of the management company and the association along with the broader community. By hiring uninsured vendors or contractors, the management company and the HOA can be held liable for workers' compensation claims submitted by their vendors. The recommendation is to purchase workers' compensation insurance to protect against the rare occasion where an HOA may be deemed the employer of a contractor's employee.

The landmark case that created this best practice recommendation of workers' compensation insurance for an HOA is from 2007. In *Heiman v. Workers' Compensation Appeals Board* (149 Cal.App.4th 724), an unlicensed and uninsured contractor was hired to install rain gutters on a condominium building. An employee of the contractor was injured on the job, and the absence of a policy to provide benefits for the injured worker left the Workers' Compensation Appeals Board assigning the payment obligation equally to the employee's contractor, the association, and the management company.

Had the association carried its own Workers' Compensation policy, the Comp Board would have likely stopped there and closed the case because benefits would have been available for the injured worker. The manager could have protected themselves simply by insisting that their association client purchase a zero (\$0) payroll (AKA "If-Any") Workers' Compensation policy. An "If-Any" Workers' Compensation policy provides a backup should a contractor's policy fail.

"If-Any" Workers' Compensation including Coverage for Volunteers

In addition to the "If-Any" exposure addressed in *Heiman*, the HOA and the management company are at risk of owing Workers' Compensation benefits to injured volunteers who perform work on behalf of the HOA.

Two realistic scenarios:

- An HOA member volunteering at a Saturday Community Clean-up Day is injured.
- A volunteer board member slips and falls during a site inspection.

Although the general liability policy provides bodily injury coverage, bodily injury to an employee (the HOA volunteer) is specifically excluded, so the exposure is moved to a Workers' Compensation policy. To protect its volunteers, board members, and committee members, the HOA should purchase a Workers' Compensation policy.

The board and the entire community rely on volunteers to keep the community standards at their peak level for the lowest possible cost. Volunteers create a sense of teamwork within the community and bring neighbors together. Showing support for a volunteer who gets injured supports the continuation of volunteer led community improvement projects.

Most carriers providing Workers' Compensation insurance to HOAs will include coverage for board members and committee members, but does the policy cover volunteers? Considering compensation is not provided for board or committee participation (or should not be), everyone is a volunteer. What the carrier needs to know is who is supposed to be working (more specifically volunteering) for the HOA. To protect each of these volunteers, it is important that volunteers be named to a committee created by the board and the names of participants be recorded in the minutes of a board meeting. In most states, a Workers' Compensation policy should include a "Voluntary Compensation Endorsement" to extend coverage to these volunteers.

The payments and injuries below are actual examples of paid claims on "If-Any" Workers' Compensation Policies.

Claim Paid	Injury Description	Job Description	Accident Description
\$8,823	SPRAIN	TREASURER	ESCORTING UNIT OWNERS - FELL & INJURED SHOULDER
\$5,839	SPRAIN	BOARD MEMBER	MEETING WITH UNIT OWNER - TRIPPED AND FELL
\$123,970	FRACTURE	VOLUNTEER	TRIPPED ON TREE ROOT - FRACTURE KNEE AND SHOULDER
\$54,394	FRACTURE	BOARD PRESIDENT	FELL DOWN THE STAIRS - FRACTURED BOTH ANKLES
\$159,958	FRACTURE	BOARD MEMBER	TRIPPED - FRACTURED KNEE
\$28,180	DISLOCATION	VOLUNTEER	FELL - SHOULDER DISLOCATION
\$81,275	STRAIN	VOLUNTEER	TRIPPED - MULTI BODY PART STRAIN

Refusal to Buy Coverage

The HOA board is charged with making decisions it feels are in the best interest of the HOA. As an agent of the HOA, management should work with an insurance professional to present the details of the Heiman case and the availability of "If-Any" Workers' Compensation coverage to protect their HOA's exposure. If the board opts not to purchase coverage, managers and management firms might consider a procedure to have a board member sign a "refusal/rejection of coverage" letter, and a copy should be provided to the HOA's broker/agent to be kept on file in case a Workers' Compensation claim arises.

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