

Since “Additional Insured” status is not permitted in Workers Compensation insurance, the next best thing may be a “Waiver of Subrogation.”

What is a “Waiver of Subrogation?”

The standard California Workers Compensation & Employers Liability policy, and other states workers compensation policies, contain a subrogation clauses. It appears twice respectively; under paragraph “G” in Part One, Workers Compensation Insurance and in paragraph “H” in Part Two, Employers Liability Insurance.

These paragraphs state that your insurance company has your rights and the rights of your employee, if entitled to Workers Compensation or Employers Liability benefits, to recover payments it has made (to the injured worker) from anyone liable for the injury to the employee

Example:

Holly is seriously injured at work when a recently installed light fixture falls on her head. Holly’s employer’s Workers Compensation insurer, Calamity Casualty, takes care of Holly’s first aid, medical bills and partial wage replacement and Holly later returns to work. Then in a subrogation action Calamity Casualty sues the installer of the light fixtures for negligent installation to recover all of the costs paid for Holly’s Workers Compensation claim.

Now had Holly’s employer waived its rights (Waiver of Subrogation) to sue the light fixture installer, the insurer, Calamity Casualty, could not sue or obtain reimbursement for any Workers Compensation benefits paid to Holly.

Important:

Note that the waiver of subrogation is the insurer’s right and that the waiver to the employer must be granted by the insurer; resulting in a Waiver of Subrogation endorsement (WC 00 03 13).

Waivers costs vary from 5% of the annual premium to a flat premium charge (\$500 more or less) and typically the premium generated by (in our example) by the payroll of the installers of the light fixtures.

Conclusion:

The employer’s waiver of subrogation to the installer (in our example) does not prevent Holly, the injured employee from bringing suit against the third party – installer.

Waivers of Subrogation are State specific. Many states have prohibited the use of waivers on the basis that they are against public policy. Check State regulations surrounding waivers!