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**POLICY 61.18**

**Section: Coverage and Jurisdiction**

**Effective: 12-15-99**

**Title: Industrial Insurance for  
Corporate Officers**

**Cancels: Policy 3.09  
Dated 7-26-87**

**See Also: RCW 51.12.020 (8) (Employments excluded)  
WAC 296-17-31018 (Exception classifications)  
Employer Services Policy 61.04 ( Processing Applications for Elective Coverage)  
Edward D. Church v DLI**

**Approved by:** \_\_\_\_\_

**Victoria A. Kennedy for the Insurance Services Policy Council**

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This policy applies to corporate officers.

RCW 51.12.020 is applied to determine whether an officer is covered. WAC 296-17-31018 is applied to determine which risk class an officer may be reported in. The two rules have different definitions for an officer and must be applied independently.

**1. Some corporate officers are exempt from mandatory coverage.**

To be considered a bona fide officer and/or director, the individual must be voluntarily elected, or appointed to the position, of their own free will and with their express knowledge. Additionally, the election or appointment must be made in accordance with the corporate articles and bylaws.

To exercise substantial control in the daily management of the corporation means the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

The statute states that, for purposes of determining officer coverage, substance is considered more important than form. Mandatory coverage applies to workers who are simply named as officers and do not perform the duties of an officer.

RCW 51.12.020(8) provides the exemption for corporate officers. The statute specifies different rules for public, non-public and family corporations:

**1a.** Corporations defined as public companies.

"Public company" means a corporation that has a class of shares that are publicly traded as defined in RCW 23B.01.400(21).

To be exempt, the officers of a public corporation must meet the following tests:

- They must be a bona fide officer.
- They must be a bona fide director.
- They must be a shareholder in the corporation, with stock issued in their name.
- They must exercise substantial control in the daily management of the corporation.
- They cannot perform manual labor as part of their primary duties.

**1b.** Non-public corporations.

To be exempt, the officers of a non-public corporation must meet the following tests:

- They must be a bona fide officer
- They must be a shareholder in the corporation, with stock issued in their name.
- They must exercise substantial control in the daily management of the corporation.
- The corporation can exempt no more than eight officers.

If the corporation has more than eight officers at any time, the corporation may choose which officers in excess of eight are not exempt. Officers of a non-public corporation can perform manual labor and still be exempt.

**1c.** Family corporations.

To be exempt, *all* of the officers of the corporation must meet the following tests:

- They must be a bona fide officer.
- They must be related within the third degree of kin by blood or by marriage.

Degrees of relation are:

- 1<sup>st</sup> degree – Parent/child
- 2<sup>nd</sup> degree – Grandchild, brother, sister, grandparent
- 3<sup>rd</sup> degree – Great grandchild, nephew, niece, uncle, aunt, great grandparent

There is no limit to the number of bona fide, related officers who can be considered exempt.

If any of the officers are not related within the third degree of kin, then apply the criteria of 1b only. The non-public corporation must follow the criteria of either 1b or 1c; they can't use the exemption criteria of both sections. In other words, if a non-public corporation has several related officers and one officer who is not related, they must apply the exemption tests described in 1b above.

**2. Elective coverage is available for corporate officers.**

The election to cover officers is inclusive for *all* exempted officers. The corporation may not elect coverage for only some officers.

Refer to Policy 61.04 to see when coverage begins and ends.

**3. Corporate officers who don't meet the exemption criteria.**

Corporate officers who don't meet the exemption criteria described above are mandatorily covered. However, an officer who performs no work for the corporation and receives no compensation other than a return on investment is not a worker and is not covered.

The rules described in parts 1 through 3 above are used to determine if an officer is exempt. If an officer is covered, either by elective coverage or because they fail to meet the exemption criteria discussed above, the following rules are applied to determine the proper risk classification.

**4. Reporting of officers/individuals who meet the tests of WAC 296-17-31018.**

- Officers who meet the tests of WAC 296-17-31018 and whose duties are limited to clerical, outside sales and administrative tasks may be reported in class 7101.
- Officers who meet these tests may *not* be reported in class 4904.
- Officers who meets these tests must be reported in class 6303 if their duties are restricted to outside sales or estimating only, as described in WAC 296-17-31018.

**5. Reporting of officers/individuals who do not meet the tests of WAC 296-17-31018.**

- An officer or individual that fails to meet all of the tests in WAC 296-17-31018 cannot be reported in class 7101.
- If such an officer or individual has only clerical or administrative duties in the office, and clerical office is not included in the firm's basic class, they can be reported in class 4904.

Policy Author: Steve Benfield  
Phone Number: (360) 902-4652