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I. POLICY PURPOSE

This policy ensures that BWC staff appropriately recognize when an injured worker (IW) is considered an employee for workers' compensation coverage purposes and assists staff in appropriately identifying special circumstances that dictate the nature of workers' compensation coverage.

II. APPLICABILITY

This policy applies to Claims Services staff and Employer Services staff.

III. DEFINITIONS

Alternate Employer Organization (AEO)
A sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for purposes of providing human resource management services and sharing employer responsibility and liability. An AEO does not include a temporary service agency.

Apprentice
An individual at least 16 years of age, who is in a registered apprenticeship program to learn a skilled occupation pursuant to a registered apprenticeship agreement. For purposes of this policy, "apprentice" must include a:

- Pre-apprentice;
- Entry-level trainee;
- Journeyperson.

Apprenticeship Agreement
A written agreement, registered with the apprenticeship council, providing not less than 2,000 hours of reasonably continuous employment, and for participation in an approved schedule of work experience through employment, which must be supplemented by a minimum of 144 hours per year of related and supplemental instructions.

Bona Fide Equipment/Vehicle Lease Agreement

An arrangement between the owner of a truck and a driver, where the driver is given legal control of the vehicle to use as if they are the owner in exchange for a payment to the owner for such use. In the transportation industry, a bona fide lease agreement contains commercially reasonable terms made with earnest intent, without fraud or deceit.

Calendar Quarter
One-fourth of a calendar year as follows:
1st quarter – Jan. 1 through March 31;
2nd quarter - April 1 through June 30;
3rd quarter - July 1 through Sept. 30;
4th quarter- Oct. 1 through Dec. 31.

Casual Worker
An individual whose work is occasional and not on a regular basis. A casual worker can include a member of a labor crew brought to a job site to labor on completing the task a contractor is responsible to perform.

Church
An established and legally recognized congregation, denomination, society, corporation, fellowship, convention, or association formed primarily or exclusively for religious purposes.

Client Employer
A sole proprietor, partnership, association, limited liability company, or corporation that enters into a Professional Employer Organization agreement and is assigned shared employees by the Professional Employer Organization.

Construction Contract
An oral or written agreement involving any activity in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

Construction Worker
An individual performing services under a construction contract if at least 10 of the statutory criteria in ORC 4123.01(A)(1)(c) are met.

Contractor Controlled Insurance Program (CCIP)
A program held by a self-insured employer that is also a construction contractor during the construction or renovation of a property, to cover all workers' compensation liability arising from the construction project. This can also be referred to as an SI wrap-around project.

Coverage
For purposes of this policy, reference to an IW's inclusion in a workers' compensation policy, whether mandated by law or elective.

Digital Network Staffing Platform
Any online-enabled application, software, website, or system offered or used by a company that enables the prearrangement of labor services with an unrelated third-party client.

Elective Coverage
Workers' compensation coverage an employer or individual may obtain pursuant to ORC 4123.01, for workers that are not defined as employees for purposes of workers' compensation. The following are entities or persons not defined as employees who must elect to purchase workers' compensation coverage to be covered:

- **Entity:** a sole proprietorship, a partnership, a limited partnership, an individual incorporated as a corporation with no employees, a family farm corporation, or an LLC filing a federal tax form as a sole proprietor or partnership.
- **Person:** a sole proprietor, a member of a partnership, a member of a limited partnership, an individual incorporated as a corporation with no employees, an officer of a family farm corporation, or an individual member of a limited liability company (LLC) filing a federal tax form as a sole proprietor or partnership., a duly ordained, commissioned, or licensed minister, or assistant or associate minister of a church (or equivalent position and organization) in the exercise of a ministry.

Emergency Management Worker
An individual who has registered for service pursuant to ORC 5502.34, in connection with the development, maintenance, and operation of any state or local emergency management agency authorized by law, and who has met the minimum requirements of ORC 4123.031 to 4123.037, or who has been registered as an emergency management worker pursuant to ORC 5502.34 during a disaster or emergency.

Emergency Responder
An off-duty peace officer, firefighter, or EMT who responds to inherently dangerous situations as they would if on duty.

Employee
Any person that is not an independent contractor and is working under any appointment or contract of hire, express or implied, oral or written. This includes:

- Public sector workers;
- Private sector workers;
- Emergency responders;

- Construction workers; and
- Motor carrier drivers.

Employer
As defined in ORC 4123.01(B)(1) the term "employer" includes:

- The state, including state hospitals; each county, municipal corporation, township, school district; and hospital owned by a political subdivision or subdivisions other than the state (also known as a "Public Employer").
- Every person, firm, professional employer organization, alternate employer organization, and private corporation, including any public service corporation, that:
    - Has in service one or more employees or shared employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, verbal or written; or
    - Is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums as provided by ORC Chapter 4123 (also known as a "Private Employer").
- All such employers are subject to ORC Chapter 4123.

Employer of Record (EOR)
Entity legally responsible for purposes of workers' compensation as the employer for a claim filed by an IW.

Entry-Level Trainee
An individual who possesses experience that qualifies the individual as a journeyperson but for the existence of certain other disqualifying conditions, and who receives on-the-job training accompanied by classroom instruction outside of normal working hours.

Federal Jurisdiction
Federal jurisdiction applies to workers who are not covered by the Ohio Workers' Compensation Act, such as federal employees, maritime injuries, civilian employees working outside the United States on military bases (Defense Base Act claims), and railroad employees.

General Contractor
An entity with whom a principal/property owner directly contracts to perform certain jobs. Some or all of the enumerated tasks are subsequently contracted to other entities (subcontractors) for performance. For general contractor relationships to exist there must be three parties:

- A principal/property owner;
- An independent contractor; and

- A subcontractor hired by an independent contractor (making the independent contractor a general contractor).

Household Worker
A worker hired to perform services in the home (e.g., housekeeper, nanny, gardener).

Independent Contractor
An entity with whom the principal/owner directly contracts to perform a certain task or tasks. Independent contractors are generally engaged to perform operations not within the usual trade or business of the principal/owner and such tasks are contract specific. The test for determining valid independent contractor status is performed through application of the Ohio common law factors, except for persons who perform labor or provide services pursuant to a construction contract under ORC 4123.01(A)(1)(c), and persons who operate a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property under ORC 4123.01(A)(1)(d).

"Leasing Onto" Agreement
An arrangement between an owner-operator of a vehicle and a motor carrier whereby the owner-operator drives their own vehicle under the motor carrier's USDOT operating authority.

Minister
A duly ordained, commissioned, accredited, or licensed minister, member of the clergy, rabbi, priest, or Christian Science practitioner. This definition includes assistant ministers and associate ministers.

Motor Carrier Driver
An individual operating a vehicle for a motor carrier, unless classified as an owner-operator.

Ohio Organized Militia
Members of one of the following:
- The Ohio National Guard, which includes both the Ohio Air National Guard and the Ohio Army National Guard;
- The Ohio Naval Militia;
- The Ohio Military Reserve.

Owner Controlled Insurance Program (OCIP)
A program held by an self-insured employer, public school district, county school financing district, education service center, community school, state institution of higher education, or municipal power agency during the construction or renovation of a property, to cover all

workers' compensation liability arising from the construction project. This can also be referred to as an SI wrap-around project.

Owner-Operator
A person who owns and may operate a vehicle that is used to transport property. In the event the owner-operator is operating a vehicle in the performance of services for or on behalf of a motor carrier transporting property, they are considered an independent contractor if all of the following factors apply:

- The person owns the vehicle, or leases the vehicle under a bona fide equipment/vehicle lease agreement;
- The person is responsible for supplying the necessary personal services to operate the vehicle or vessel used to provide the service;
- The compensation paid to the person is based on factors related to work performed, including on a mileage-based rate or a percentage of any schedule of rates, and not solely based on the hours or time expended;
- The person substantially controls the means and manner of performing the services, in conformity with regulatory requirements and specifications of the shipper.
- The person enters a written contract with the carrier for whom the person is performing the services that describes the relationship between the person and the carrier to be that of an independent contractor and not that of an employee.
- The person is responsible for substantially all of the principal operating costs of the vehicle and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle insurance, and personal expenses, except that the person may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.
- The person is responsible for any economic loss or economic gain from the arrangement with the carrier.

Peace Officer
An individual legally vested with law enforcement rights who generally works for a city, county or state public employer and can be either "traditional" (e.g., police officer) or "non-traditional" (e.g., certain park rangers, tax agents or liquor agents).

Placeholder Policy
An employer policy number that is created when an alleged employer has never established a policy with BWC, BWC no longer has a record of the policy number, or the policy is in a "cancelled" status, and the date of injury occurred after the policy was cancelled.

Pre-Apprentice

An individual receiving formal classroom training designed to provide basic education, attitudes, skills, trade knowledge, and motivation necessary to enter a formal apprenticeship program.

Private Sector Worker
An individual working for any person, firm, or corporation that:

- Employs one or more persons regularly;
- Pays household or casual workers at least $160 in a calendar quarter; or
- Is contractually obligated to pay premiums into the state insurance fund.

Professional Employer Organization (PEO)
A sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more employers, known as client-employers, for the purpose of co-employing all or part of the client-employer's workforce at the client-employer's work site.

Public Sector Worker
An individual serving the state or its subdivisions (e.g., counties, cities, townships, school districts), including:

- Police and firefighters (paid or volunteer);
- Executive officers and elected officials; and
- Members of boards of education.

Rehabilitation Injury
A new injury or occupational disease sustained while the injured worker is participating in an approved vocational rehabilitation plan.

Source Claim
The original claim in which the IW was participating in an approved vocational rehabilitation program. For purposes of this policy, the claim in which the IW sustained an injury while participating in an approved vocational rehabilitation program.

Subcontractor
An entity that is hired by a general contractor (or prime contractor, or main contractor) to perform a specific task as part of the overall project and is normally paid for services provided to the project by the originating general contractor.

State Active Duty

Status of a member of the Ohio organized militia who is performing duty by order of a state authority, and while in this state active-duty status injury and occupational disease benefits are not provided by the federal government.

Statutory Employer
An entity in any industry that is responsible for a claim by operation of law due to using an uninsured independent contractor or subcontractor, or where ten or more of ORC 4123.01(A)(1)(c) employee criteria are applicable when a person is performing labor or providing services pursuant to a construction contract.

Temporary Labor Services (Temp or Staffing) Agency
An entity that, as part of its trade or business, provides individuals to unrelated third-party clients to perform services on a temporary basis and derives revenue or other benefits from providing such individuals. A Temp agency is not:

- An AEO as defined in ORC Chapter 4133; or
- A PEO as defined in ORC Chapter 4125.

Transportation Network Company
A corporation, partnership, association, limited liability company, proprietorship, or any other entity operating in this state that uses a digital network to connect transportation network company riders to transportation network company drivers who provide transportation network company services.

Transportation Network Company Driver
An individual to whom both of the following apply:

- The individual receives connections to passengers and potential passengers and related services from a transportation network company in exchange for the payment of a fee to the company.
- The individual uses a personal vehicle to offer or provide transportation network company services to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

Unrelated Third-Party Client
Entities unrelated to, or not sharing common ownership, management, or control with the temporary labor services agency, and which is provided individuals by the temporary labor services agency to perform services on a temporary basis. For this policy, “unrelated third-party client” and “client” have the same meaning.

IV. POLICY

A. IW Coverage for Ohio Workers' Compensation Benefits
    1. BWC will consider a worker covered for Ohio Workers' Compensation benefits when:
        a. The IW meets the definition of employee; or
        b. Does not meet the definition of employee but has elective coverage.
    2. The existence of workers' compensation coverage for an employer does not automatically mean a particular IW is covered.
    3. BWC will investigate all coverage issues before making a determination in a claim.

B. Special Coverage Provisions
    1. Certain provisions impact the IW's coverage or right to participate in the Ohio Workers' Compensation system. These special provisions are detailed in both the ORC and federal law.
    2. The following scenarios have special provisions dictated by ORC:
        a. Independent Contractor/Subcontractor;
            i. Construction industry;
            ii. Trucking industry;
            iii. Statutory employer.
        b. Elective Coverage;
        c. Transportation Network Company;
        d. Temporary Agency;
        e. PEO and AEO;
        f. Apprenticeship;
        g. Casual or Household Worker;
        h. Emergency Management Worker;
        i. Responder to an Inherently Dangerous Situation;
        j. Ohio Organized Militia;
        k. Performing Special Services for the State or Political Subdivision;
        l. Individuals Injured or Killed While Performing a Request or Order of a Duly Authorized Public Official;
        m. Injuries Incurred While Participating in an Approved Vocational Rehabilitation Plan;
        n. Coverage Exemption for Religious Sects.
    3. The following scenarios have special provisions dictated by Federal Law:
        a. Federal Employees
            i. Workers' Compensation for federal employees is governed by the Federal Employees' Compensation Act (FECA), and claims are administered by the U.S. Department of Labor, Office of Workers' Compensation Programs.
            ii. FECA applies to most civilian federal employees who suffer job-related injuries or occupational diseases.

b. Longshore and Harbor Workers' Compensation Claims
    i. Maritime injuries and occupational diseases are covered under federal law, administered by the U.S. Department of Labor, and are not assigned to state-fund risk accounts.
    ii. Land-based maritime claims are covered by the "Longshore and Harbor Workers' Compensation Act."
        a) The Longshore Act covers employees in traditional maritime occupations such as:
            i) Longshore workers;
            ii) Ship-repairers;
            iii) Shipbuilders or shipbreakers; and
            iv) Harbor construction workers.
        b) The injuries must occur on the navigable waters of the United States or in the adjoining areas, including piers, docks, terminals, wharves, and those areas used in loading and unloading vessels.
        c) Sea-based maritime claims are covered under other maritime laws, including the "Jones Act," see also the "Merchant Marine Act of 1920."
c. Federal Black Lung Benefits Act Claims
    i. Federal Black Lung claims are covered by the "Federal Coal Mine Health and Safety Act," and are administered by the U.S. Department of Labor.
    ii. The Black Lung Benefits program provides compensation for coal miners suffering from a totally disabling respiratory or pulmonary impairment.
    iii. BWC has the authority to assign occupational disease claims caused by coal dust exposure to state-fund risk accounts for claims filed under Ohio law. Claims are only assigned to coal workers' pneumoconiosis fund risk accounts when BWC receives a "Notice of Claim" from the U.S. Department of Labor, Office of Workers' Compensation Programs.
d. Railroad Employees
    i. The Federal Employers' Liability Act (FELA) imposes liability on interstate railroads for negligence resulting in the injury or death of their employees.
    ii. This law provides an exclusive source of recovery for railroad employees injured or killed while working in interstate commerce.

V. PROCEDURE

A. General Claim Note and Documentation Requirements
    1. BWC staff will refer to the *Claim File Contents and Documentation* policy and procedure for claim note and documentation requirements; and
    2. Must follow any other specific instructions for claim notes and documentation included in this procedure.

B. Initial Review and Investigation
    1. When a new claim is filed, Claims Services staff must review the information in the claim file and, if necessary, investigate and gather evidence to determine if:
        a. The alleged employer listed in the claims management system *or First Report of Injury, Occupational Disease, or Death* (FROI) is the correct employer;
        b. The alleged employer has an existing policy and whether the policy was active at the time of injury; and
        c. The IW is an employee, or if the IW does not meet the definition of employee, whether the IW has elective coverage.
    2. Investigate whether any special provisions exist that may impact the IW's coverage or right to participate in the Ohio workers' compensation system.
        a. These special provisions are detailed throughout this procedure.
        b. Claims Services staff must staff all claims involving special provisions detailed in this policy and procedure with BWC's Legal Division.

C. Coverage Detail that Impacts Initial Determination
    1. After completion of the coverage investigation, Claims Services staff must determine if the claim meets all of the criteria outlined above and those outlined in the *Statute of Limitations* policy and procedure, *Compensable Injuries* policy and procedure, and *Initial Claim Determination* policy and procedure.
    2. Reasons a claim would be disallowed for coverage issues include, but are not limited to:
        a. The IW is not an employee;
        b. The IW is not otherwise covered by an elective coverage policy; and
        c. The IW is not entitled to coverage under any of the specific ORC sections discussed in this policy and procedure.

D. Independent Contractors/ Subcontractors
    1. General investigation
        a. One of the basic elements of the independent contractor relationship is whether the IW is operating their own independent business or occupation. If that factor is not met, other factors will generally not support an IW's status as an independent contractor.
        b. If evidence in a claim suggests that the IW is an independent contractor or subcontractor, Claims Services staff must complete a thorough investigation to determine the appropriate employee/employer relationship status.
        c. If an allegation has been made that the IW is an independent contractor, Claims Services staff must obtain the answers to the questions on the *Independent Contractor Questionnaire* found on COR.

i. Claims Services staff must first attempt to contact the IW and the alleged employer by phone.
ii. If contact by phone is unsuccessful, staff will send the questionnaire to the IW and the alleged employer by mail or email.
iii. Claims Services staff must image the completed questionnaire to the claim file.

d. Factors to consider in the investigation to determine if the IW is an independent contractor or subcontractor are divided into critically useful, generally useful, possibly useful, and rarely useful.
   i. This categorization is intended only to identify those facts that are more relevant than others in considering a relationship in context of parties that may be involved in the work and the working relationship.
   ii. Not all factors are relevant to every claim, but it is important to consider enough factors to support and clearly explain the rationale behind the determination.
   iii. Factors that are critically useful include:
      a) The type of business;
      b) Whether the IW is engaged in an independent business or occupation; and
      c) Whether the work is part of the regular business of the entity paying the worker.
   iv. Factors that are generally useful include:
      a) Skills required in the particular occupation. A license for an occupation or trade must be examined with context for the type of work and place of work;
      b) Method of payment, including:
         i) What entity is providing payment;
         ii) What work is being paid for; and
         iii) How the payment is made.
      c) Whether the IW incurs the main expenses related to the service performed under a contract;
      d) Whether the IW provides the necessary tools to perform the work;
      e) Whether the IW is responsible for satisfactory completion of the work under a contract and is liable for failure to complete the work. Considerations include whether the IW is compensated solely for their personal labor;
      f) Whether the IW may earn a profit or suffer a loss under a contract to perform work; and
      g) Whether the IW has continuing or recurring business liabilities or obligations.

v. Factors that are possibly useful include:
    a) Length of employment;
    b) Who controls the hours worked;
    c) Which party selects the materials, tools, and personnel;
    d) Which party selects the route to the job site; and
    e) Terms of any agreement or contract.
vi. Factors that are rarely useful include:
    a) Receipt of IRS Form 1099 because both properly classified independent contractors and misclassified employees may be compensated via this method; and
    b) Receipt of benefits because recipients of an IRS Form 1099 typically do not receive the benefits an employee would receive, such as paid time off or health insurance.

e. Claims Services staff must also:
    i. Review documentation of the IW's wages;
    ii. Request any written agreement between the IW and the alleged employer;
    iii. Review other claims against the same employer; and
    iv. Seek any other information that may help clarify the IW's employment status.

2. Construction Industry
    a. In addition to securing the answers regarding independent contractor status as outlined above, if the claim involves the construction industry and the alleged employer asserts in the initial contact that the IW is a subcontractor or independent contractor, Claims Services staff must attempt to:
        i. Identify the contractor tier for the project using the *Project Contractor Investigation Sheet* on COR; and
        ii. Obtain the address of the project where the injury occurred.
    b. Once all of the available documentation is received from both parties, Claims Services staff must staff with BWC's Legal Division to determine employee status and if a different employer than listed is responsible for the claim.
3. Trucking industry
    a. In addition to securing the answers regarding independent contractor status as outlined above, if the claim involves the trucking industry and the alleged employer claims the driver is an independent contractor, Claims Services staff must request:
        i. Motor vehicle crash report, if applicable;
        ii. Cab Card for the truck that includes the name and address of the registrant/operator, vehicle description, VIN, owner/lessor name and address, and the USDOT motor carrier responsible for safety;

iii. Any agreement between the driver and the alleged employer. These agreements may have titles like “Independent Contractor Agreement”, “Driver Agreement”, “Lease Agreement”, or “Leasing onto” Agreement; and
iv. Settlement sheets or statements for one month prior to the date of injury.

b. Once all of the available documentation is received from all parties, staff with BWC’s Legal Division to determine employee status and if a different employer than listed is responsible for the claim.

4. Legal Staffing and Outcome
   a. Upon completion of their investigation, Claims Services staff must staff all independent contractor and subcontractor issues with BWC’s Legal Division.
   b. Statutory Employers
      i. A statutory employer may be responsible for the claim if the work is performed under a construction contract.
      ii. If the result of the Legal staffing is that there is a statutory employer in the claim, Claims Services staff must update the statutory employer’s policy number as the insured employer in the claims management system.
   c. After staffing with BWC’s Legal Division, Claims Services staff will publish an order with one of the following findings:
      i. The IW is an employee of the original alleged employer;
      ii. The IW is an independent contractor. The order against the alleged employer must indicate that:
         a) There is no proof of an employee/employer relationship; and
         b) The IW is an independent contractor.
      iii. A statutory employer is responsible for the claim.
         a) Claims Services staff must include the following in the order:
            i) The applicable language found in the *Statutory Employer – Claim Allowance Language* on COR; and
            ii) The original alleged employer as an additional recipient.
         b) If the decision is appealed, Claims Services staff must request a BWC attorney to attend the hearing.
   d. Based on the result of the Legal staffing, BWC’s Legal Division may provide additional order language to Claims Services staff.

E. CCIP and OCIP
   1. If Claims Services staff receives notice that the claim should be under a CCIP or OCIP project, staff will:
      a. Attempt to confirm the appropriate policy number from the employer or IW; and
      b. Send an email to the BWC Self-Insured Inquiries email box with the:
         i. IW’s name

ii. Employer of the IW;
iii. Project (CCIP or OCIP) manager; and
iv. Project name that the claim allegedly belongs to (if available).

2. The CSS will receive an email response that verifies if the claim falls under a specific CCIP or OCIP project.
3. If the claim falls under a specific CCIP or OCIP project, Claims Services staff will change the policy number on the claim to the appropriate self-insured employer.
4. For example:
   The IW works for Mark's Heating and Cooling. The IW normally services residential heating and cooling equipment around the city. However, on the date of injury, the IW was installing heating and cooling equipment at a large Cleveland Clinic construction site, which had a CCIP or OCIP policy for this IW. During the installation, the IW smashed his hand. The IW went to the local ER for treatment and filed the claim against Mark's Heating and Cooling as his EOR, while it should have been filed under the CCIP or OCIP policy number.

F. Elective Coverage
   1. Some categories of workers are not required to have workers' compensation coverage. Therefore, an employer may have coverage for the business, but an individual worker who is not defined as an employee per ORC 4123.01(A) (e.g., owner) will only be covered if:
      a. The individual elects and pays for coverage themself; or,
      b. Their employer elects to pay for coverage for the individual.
   2. Indicators that an elective coverage situation may exist include:
      a. The IW's last name is also the name of the business;
      b. The IW's address is the same as the business address;
      c. The IW's phone number and the business phone number are the same or similar;
      d. The IW is listed as an owner, sole proprietor, partner, or individual incorporated as a corporation on the FROI;
      e. The IW is a family farmer;
      f. The IW's Social Security number and the employer's Federal Tax ID number are the same.
   3. Pursuant to ORC4123.01(A)(2), a volunteer officer of a nonprofit corporation is specifically excluded from the definition of employee, and the employer does not have the option to elect coverage.
   4. If it appears the claim involves an elective coverage situation, Claims Services staff must research the employer customer record in the claims management system to see if the IW is listed as having elective coverage when the IW is:
      a. The owner of a sole proprietorship;

b. A member of a partnership;
c. An individual in a limited liability company (LLC) acting as a sole proprietorship or partnership;
d. An officer of a family farm corporation;
e. An individual incorporated as a corporation (with no employees);
f. A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church (or equivalent position and organization) in the exercise of a ministry which can be covered electively under the church or under their own sole proprietor policy.

5. When coverage has been elected for any individual listed above, Claims Services staff must not provide workers' compensation benefits or compensation until elective coverage is verified for the date of injury. To verify elective coverage, Claims Services staff must:
   a. Select the Participants section within the claim on the left side header in the claims management system;
   b. Highlight the insured's name;
   c. Click the Details tab;
   d. Under Policy Individuals, see if they are checked as covered; and
   e. Coverage Status dropdown verifies whether the employer of record had coverage on the date of injury.
6. The EOR must have coverage on the date of injury for the elective coverage to be valid.
7. Claims Services staff may obtain further guidance and/or evidence regarding elective coverage issues by:
   a. Contacting the IW and employer to clarify coverage status; or
   b. Staffing with the Employer Services Specialist (ESS).
8. Before making a final determination of the status of elective coverage, Claims Services staff must staff the claim with BWC's Legal Division.
9. When an elective coverage person is not covered, Claims Services staff must:
   a. Notify the person of the lack of coverage and dismiss the claim via Ad Hoc correspondence titled, "Elective Coverage Determination."
      i. This correspondence informs the person how to pursue a complaint regarding the lack of insurance in force on the date of injury.
      ii. Claims Services staff must include the following language in the letter: *"The IW is an elective coverage person who did not choose to participate in the workers' compensation system by purchasing coverage before the injury occurred. As a result, this claim is dismissed because coverage was not in force on the date of injury. To secure coverage in the future, an application for elective coverage must be submitted. Elective coverage is effective the date BWC receives the U3-S form and the required premium installment payment.*

This decision does not address the merits of the claim and is not appealable pursuant to ORC 4123.511. If you have any questions or disagree with this lack of coverage decision, you may call 614-466-6773 or submit a complaint by email to rtsclass@bwc.ohio.gov. Decisions on elective coverage complaints are appealable to the BWC Adjudicating Committee pursuant to ORC 4123.291 and OAC 4123-14-06 by submitting a LEGAL-15 form stating the specific grounds for appeal with supporting documentation."

b. In the event retroactive elective coverage is granted by the Policy Processing Department, the claim will be processed on the merits.

G. Transportation Network Company
   1. If the IW appears to be a transportation network company driver (e.g., the employer is listed as UBER or LYFT), Claims Services staff must determine if:
      a. The transportation network company has an agreement with the transportation network driver to provide workers' compensation coverage; or
      b. The transportation network driver has purchased workers' compensation coverage for themself.
   2. Claims Services staff must staff these claims with:
      a. Their supervisor;
      b. Employer Management (EM) staff; and
      c. BWC's Legal Division.

H. Temporary Labor Services (Temp or Staffing Agency)
   1. Claims Services staff must identify the temporary agency as the EOR for coverage when the claim involves an IW who is employed by a temporary agency but is performing services for a third-party client.
   2. If the temporary agency alleges an IW is an independent contractor but is performing services at a place of employment, Claims Services staff must:
      a. Follow the independent contractor procedures;
      b. Determine if the site employer has control over the work environment and safety conditions; and
      c. Staff the claim with BWC's Legal Division.
   3. Refer to the *Violation of Specific Safety Requirement (VSSR)* policy and procedure for exceptions concerning VSSR awards following the initial coverage determination.

I. PEO and AEO
   1. If an employer has entered into an agreement with a PEO or AEO, Claims Services staff must identify the PEO or AEO as the employer responsible for coverage in a claim.

2. When a PEO or AEO has been identified as the employer, Claims Services staff must verify this information by sending an email to the PEO/AEO Unit supervisor via the BWC PEO Inquiry email box, and providing:
    a. The claim number;
    b. The date of injury;
    c. The policy number of the employer the claim has been filed under; and
    d. Any information pertaining to the PEO contained in the claim file.
3. Claims Services staff must note any corrections to the PEO information made by the PEO Unit.
4. See the BWC Employer Services *Alternate Employer Organizations (AEOs) and Professional Employer Organizations (PEOs)* policy for further information.

J. Apprenticeship
    1. If it appears the IW may be an apprentice pursuant to ORC 4123.038 and 4123.039 (including pre-apprentice, entry-level trainee, or journeyperson), Claims Services staff must contact the IW and/or the identified employer and:
        a. Verify the IW's status as an apprentice;
        b. Determine if the IW is covered by an *Apprenticeship Elective Coverage Contract* (U-80) with BWC; and
        c. Determine if, in addition to being an apprentice, the IW is an employee of the identified employer.
    2. Claims Services staff must email the BWC Policy Processing email box and staff with BWC's Legal Division if there are any questions regarding apprenticeship coverage under a U-80.3

K. Casual of Household Worker
    1. Before determining if the IW is a casual or household worker who qualifies for coverage pursuant to ORC 4123.01(A)(1)(a)(iii)(b), Claims Services staff must first determine if the IW is an independent contractor, as described above.
    2. If the IW is not an independent contractor, Claims Services staff must determine if the IW meets the following criteria to be covered as a casual or household worker:
        a. The IW earns $160 or more in any calendar quarter during the year of injury from a single household or employer.
        b. This includes situations where:
            i. At the time of injury, the IW already earned $160 or more during the calendar quarter; or
            ii. Had the injury not occurred, the IW would have earned $160 or more during the calendar quarter.
    3. To establish this, Claims Services staff must request documentation such as:

a. Copies of paychecks or electronic money transfer systems showing payment for services transactions (e.g., PayPal, Venmo);
b. Tax documents showing how the IW reports the income; and
c. Any written agreement between the IW and the alleged employer.

4. Claims Services staff must staff decisions regarding casual or household workers with BWC's Legal Division.

L. Emergency Management Workers

1. Pursuant to ORC 4123.031-4123.037, an emergency management worker, whether paid or volunteer, is eligible for benefits payable on account of total disability, loss of body part, or death. Volunteer emergency management workers qualify for the maximum benefits applicable to accidental injury or death.
2. If the IW is filing a claim as an emergency management worker, Claims Services staff must verify that the IW:
   a. Is registered for service as an emergency worker and has taken the appropriate state or federal oath;
   b. Was acting in good faith in performing his or her emergency management duty;
   c. Was performing such duty in conjunction with the development, training, maintenance, or operation of the emergency management agency; and
   d. Was under express or constructive instruction or orders of a duly appointed director or an authorized staff member of the emergency management agency charged with the authority and responsibility for issuing such instructions or orders.
3. Prior to receiving any compensation or benefits, Claims Services staff will require the IW to provide:
   a. A copy of the "loyalty oath" filed with the political subdivision; and
   b. A certified copy of the permanent record attesting to the IW's participation as an emergency management worker in the emergency management activity that caused the injury.
4. Claims Services staff must staff decisions regarding emergency management workers with BWC's Legal Division.

M. Responders to an Inherently Dangerous Situation

1. An IW is covered by workers' compensation pursuant to ORC 4123.01(A)(1)(a) when:
   a. The IW is one of the following:
      i. A peace officer;
      ii. A firefighter of a lawfully constituted fire department;
      iii. A first-responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic of an

ambulance service organization or emergency medical service organization pursuant to ORC 4765.01;
   b. The situation being responded to is inherently dangerous;
   c. The situation requires immediate response on the part of the worker; and
   d. The worker is responding in the same manner as they would when on duty.
2. Claims Services staff must apply this provision even if the injury occurred outside of the IW's regular jurisdiction and regardless of whether the IW works in a paid or volunteer position.
3. Claims Services staff must staff decisions regarding inherently dangerous situations with BWC's Legal Division.

N. Ohio Organized Militia (Ohio National Guard, Ohio Naval Militia, Ohio Military Reserve)
   1. If the IW is filing a claim as a member of the Ohio Organized Militia (the State of Ohio would most likely be listed as the employer), Claims Services staff must verify that the IW meets the following criteria to be covered by workers' compensation pursuant to ORC 4123.021-4123.024:
      a. The IW must have been in a state active-duty status at the time of injury; and
      b. Injury and occupational disease benefits are not otherwise provided by the federal government.
   2. Claims Services staff must request from the IW a copy of their order to report to duty or other documentation to establish active-duty status.
   3. Claims Services staff must contact the Ohio Adjutant General's Department for assistance in determining whether that IW is eligible to apply for Ohio workers' compensation benefits or federal workers' compensation benefits.
   4. Claims Services staff must staff decisions regarding Ohio Organized Militia claims with BWC's Legal Division.

O. Performing Special Services for the State of a Political Subdivision
   1. Claims Services staff must consult with EM staff to determine if a public employer has an applicable *Contract for Coverage of State Agency or Political Subdivision* (U-69) when a claim is received alleging an injury while the IW was:
      a. Performing community service (typically an individual on probation or performing community service in lieu of a criminal conviction);
      b. Incarcerated in a state or local correctional facility participating in an inmate work program;
      c. Working as a non-emergency volunteer; or
      d. Was serving as a juror.
   2. Claims Services staff may refer to BWC Employer Services *Contract for Coverage of State Agency or Political Subdivision* policy for further information.

3. Claims Services staff must staff decisions regarding employees who were injured while performing special services for the state or a political subdivision with BWC's Legal Division.

P. Individuals Injured or Killed While Performing a Request of Order of a Duly Authorized Public Official
   1. If an IW is not otherwise covered under elective coverage of a public employer, they may be covered pursuant to ORC 4123.025:
      a. When the injury or death is a direct result of performing any act at the request or order of a duly authorized public official of:
         i. The state, or any institution or agency of the state; or
         ii. Any political subdivision, including a county, township, or municipal corporation; and
         iii. The request or order was made in a time of emergency.
      b. Claims Services staff must staff decisions regarding individuals injured or killed while performing a request of order of a duly authorized public official with BWC's Legal Division.
      c. If the criteria above are met, Claims Services staff must consider the IW or the IW's dependents eligible for all workers' compensation benefits as provided by law.
   2. Death claims must be reassigned to the Survivor Benefits Team for processing.
   3. Claims Services staff must ensure any payments made under this provision are charged to the Surplus Fund by sending an email to the BWC Emp Rate Adj email box with the request.

Q. Injuries Incurred While Participating in a Rehabilitation Plan
   1. Claims for injuries sustained while the IW was actively participating in an approved vocational rehabilitation plan (rehabilitation injury claims) are assigned a risk number based on employer type. If the source claim employer is a:
      a. State Fund Private Employer or a Public Employer County/City (PEC), the rehabilitation injury claim is assigned one of two risk numbers (00009999-0 for State-Fund Private Employers or 30099901-0 for PECs), ensuring that the costs of the claim are charged to the Surplus Fund.
      b. PES agency, the rehabilitation injury claim is assigned the source claim employer's risk number, ensuring that the costs of the claim are charged dollar-for-dollar to the source claim employer.
   2. Refer to the *Rehabilitation Injury Claims* policy and procedure for detailed information about processing these claims.

R. Coverage Exemptions for Religious Sects
    1. If an IW and employer indicate that they hold a religious exemption (e.g. Amish) from workers' compensation coverage, Claims Services staff must verify with EM staff that the employer and the IW both have an approved religious exemption before determining that the IW is not covered by workers' compensation.
    2. BWC may approve an employer and employee exemption from workers' compensation coverage upon the filing of *Application for Exemption from Ohio Workers' Coverage and Waiver of Benefits* (U-3E).
    3. The employer and the employee must both file the U-3E and obtain approval for the waiver.
    4. An employer may have some employees who are exempt from coverage and some who are not.
    5. The employer and employee do not have to be members of the same religious sect.
    6. Claims Services staff must staff decisions regarding issues of coverage exemptions for religious sects with BWC's Legal Division.

S. Federal Employees
    1. When a claim is filed and we discover the claim should be filed as a federal claim and not with BWC, Claims Services staff must contact the IW to determine if they wish to dismiss the claim as BWC does not have jurisdiction to process the claim.
        a. If the IW agrees to dismiss the claim, Claims Services staff will dismiss it using the "No Insured Found" risk.
        b. Because the employer has appeal rights, if the IW does not agree to dismiss the claim, Claims Services staff will investigate whether a placeholder policy already exists, or if one must be created.
    2. If Claims Services staff are unable to reach the IW and the FROI is not signed, Claims Services staff must dismiss the claim using the "No Insured Found" risk.
    3. If Claims Services staff are unable to reach the IW and the FROI is signed, staff will:
        a. Review the policy issue with the Employer Compliance Unit to determine if a placeholder policy already exists.
        b. If the placeholder policy:
            i. Exists, Claims Services staff will deny the claim against that risk.
            ii. Does not exist, Claims Services staff will request a placeholder policy to deny the claim.

T. Longshore and Harbor Workers' Compensation Claims
    1. When the evidence in the claim suggests that the injury occurred on or adjacent to navigable waters, Claims Services staff must review the claim with BWC Legal to determine whether the claim falls under federal jurisdiction.

2. In the event the claim falls under the jurisdiction of the Longshore Act, BWC's Legal Division and/or Special Claims will review in conjunction with the other states' coverage unit whether the alleged employer is a subscriber to the Marine Industry Fund. A maritime employer may also have coverage from another insurer that provides this type of insurance.
3. The "Defense Base Act" is an extension of the "Longshore and Harbor Workers' Compensation Act." The law provides coverage for civilian employees working outside the United States on military bases for either public works or national defense. Claims are administered by the U.S. Department of Labor.
    a. These claims are not assigned to state-fund risk accounts.
    b. Claims Services staff must staff any claims where the injury occurred outside the territorial boundaries of the United States with BWC's Legal Division.
4. See the *Longshore and Harbor Workers' Compensation Claims (Marine Industry Fund)* policy and procedure for more information.

U. Federal Black Lung Benefits Act Claims
1. The Black Lung Benefits program provides compensation for coal miners suffering from a totally disabling respiratory or pulmonary impairment. "Federal Coal Mine Health and Safety Act." The claims are administered by the U.S. Department of Labor.
2. BWC has the authority to assign occupational disease claims caused by coal dust exposure to state fund risk accounts for claims filed under Ohio law.
    a. Claims are only assigned to Coal Workers' Pneumoconiosis Fund risk accounts in the event that BWC receives a "Notice of Claim" from the U.S. Department of Labor, Office of Workers' Compensation Programs.
    b. BWC federal black lung claims are administered by the Special Claims Team.
    c. Claims Services staff must staff issues regarding Coal Workers' Pneumoconiosis Fund matters with BWC's Legal Division and/or Special Claims staff.
3. See the *Federal Black Lung (Coal Miner's Pneumoconiosis)* policy and procedure for more information.

V. Railroad Employees
1. The Federal Employers' Liability Act (FELA) imposes liability on interstate railroads for negligence resulting in the injury or death of their employees.
2. This law provides an exclusive source of recovery for railroad employees injured or killed while working in interstate commerce.
3. Claims Services staff must staff issues regarding railroad employees with BWC's Legal Division.