

Oklahoma Department of Labor

Oklahoma Administrative Code
Title 380 – Department of Labor
Chapter 60 – Workers' Compensation
Enforcement Rules



Mark Costello
Commissioner of Labor

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Table of Contents

380:60-1-1.	Purpose	1
380:60-1-2.	Visitation of businesses	1
380:60-1-3.	Civil penalty assessment [REVOKED].....	1
380:60-1-4.	Proof of insurance	1
380:60-1-5.	Authority to enter	2
380:60-1-6.	Interference of duty.....	2
380:60-1-7.	Certificate of non-coverage	2
380:60-1-8.	Citation of employer	7
380:60-1-9.	30-day certificate of non-coverage.....	7

380:60-1-1. Purpose

The rules contained in Chapter 60 implement the workers' compensation enforcement procedures for the fair enforcement of the Workers' Compensation Law as mandated by Statute.

380:60-1-2. Visitation of businesses

The visitation of businesses by the Department of Labor for violations shall be set by the following priorities:

- (1) whistle blower report,
- (2) a form WC3 provided by the Workers' Compensation Court,
- (3) reported suspected non-compliance by another division or government agency,
- (4) hazardous industries as recognized by the Occupational Safety and Health Administration (OSHA),
- (5) special operations for a time certain that has a predetermined target for cause or random selection both having been approved previously by the division director.

380:60-1-3. Civil penalty assessment [REVOKED]

380:60-1-4. Proof of insurance

The providing of a valid Certificate of Insurance will normally be accepted as proof of workers' compensation insurance. However, should a question arise as to the validity of coverage or the correct number of employees, then a compliance officer may seek other evidentiary documents, including but not limited to the following:

- (1) ES3 (Oklahoma Employment Securities) State Tax Report for the quarter ending that would encompass the time period of the visit.
- (2) Form 941 (Employer's Federal Tax Return) for the quarter ending that would contain the time period of the visit.
- (3) Complete payroll journal records for the months that would have an integral part of the time period of the visit.
- (4) Statements of employment or severance from employees of questionable status.
- (5) Complete copy of general ledger for time periods beginning and ending wherein the visitation date is included.
- (6) Copy of the state tax return for the previous year of the visitation date.
- (7) Copy of federal tax return for the previous year of the visitation date.
- (8) Certified copy of the last prepared profit-loss statement.
- (9) Copies of signed contract with any and/or all independent contractors/contract labor.

- (10) Identification of the independent contractor status:
- (A) Name,
 - (B) Address,
 - (C) Telephone number.
 - (D) Social Security number.
 - (E) Independent contractor's federal, state, or municipal I.D. number.
 - (F) Independent contractor's copy of application for license or permit.
 - (G) A copy of independent contractor's form of advertising showing that the entity is in business.
 - (H) A written order by a federal, state or municipality that shows the independent contractor has been determined a business and/or an independent contractor.
 - (I) A license that would show independent contractor.
 - (J) Business relationship in correlation with the business being investigated meets an independent contractor status.
 - (K) Is the independent contractor currently working for any other business excluding the business under investigation.
 - (L) Workers' compensation insurance carrier.
 - (M) Copy of independent contractor's insurance policy naming the business that is currently under investigation, i.e.:
 - (i) General liability policy
 - (ii) Specific performance bond.
 - (N) If the business being interviewed declares a formation of business as a partnership, proof of the relationship will be required.

380:60-1-5. Authority to enter

Compliance officers have the authority to enter any business during regular business hours and verify whether that business has valid workers' compensation coverage.

380:60-1-6. Interference of duty

No person shall interfere with, obstruct or hinder by force or otherwise the Commissioner of Labor, his assistants or compliance officers while in the performance of their duties, or refuse to properly answer questions asked by such officers pertaining to the laws over which he has supervision under the provision of this Chapter.

380:60-1-7. Certificate of non-coverage

- (a) "Certificate of Non-Coverage Under the Workers' Compensation Act", hereinafter referred to as a Certificate of Non-Coverage (CNC), means a card issued by the Commissioner of Labor or a designee to an individual who, after proper application and reasonable investigation,

is found to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes.

- (b) A non-refundable fee, equal to the maximum amount permitted under Section 415.1 of Title 40 of the Oklahoma Statutes, may be charged to and shall be collected from each individual who applies and must separately accompany each application for a new or renewal Certificate of Non-Coverage.
- (c) A non-refundable fee of \$5.00 per card, may be charged to and shall be collected from each individual who applies and must separately accompany each application for a duplicate or replacement Certificate of Non-Coverage.
- (d) Prior to the approval of an application for or issuance of a Certificate of Non-Coverage by the Commissioner of Labor or a designee, each new applicant must:
 - (1) Fully and properly complete a current, notarized application on an original form prepared and prescribed by the Commissioner of Labor or a designee and, if submitted by mail, provide a valid self-addressed stamped envelope with correct postage for return. The application shall include, at a minimum, the following conspicuous warnings or a substantially similar series of warnings in at least twelve-point bold-faced print designed to convey the same information:
 - (A) It is a crime to give or cause another to provide false, fraudulent, incomplete, or misleading information on a Certificate of Non-Coverage application. Potential violations will be investigated by the Commissioner of Labor or a designee and suspected violations will be referred to the Workers' Compensation Fraud Unit in the Office of the Attorney General for prosecution.
 - (B) Employers are required by law to provide workers' compensation insurance coverage for employees and failure to do so may subject an employer to both civil and criminal penalties and to liability for employee injuries regardless of whether the employee holds a Certificate of Non-Coverage.
 - (2) Provide current, acceptable supporting documentation, and all germane occupational and professional licenses required by the State of Oklahoma or any political subdivisions thereof. A List of Acceptable Documents will be provided along with the application.
 - (3) Provide a copy of the following items to substantiate the claimed exemption from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes:

- (A) If the applicant is a sole proprietor, complete and current Schedule C from the applicant's federal income tax. If the applicant has been in business for less than a year, in lieu of the Schedule C, the applicant may provide an affidavit or contract which states the following information:
 - (i) The type of work performed by the individual with whom the applicant is contracting;
 - (ii) If training, tools or machinery is involved, the individual who provides them;
 - (iii) Where the work is performed, and who sets the hours;
 - (iv) How often the applicant reports in;
 - (v) How the applicant receives compensation;
 - (vi) With whom the applicant is contracting.
- (B) If the applicant is a member of a partnership, limited partnership, or limited liability partnership, complete and current filings that are required by the Secretary of State and any political subdivisions of the State of Oklahoma.
- (C) If the applicant is an owner of at least ten percent (10%) of the capital of a limited liability company, complete and current filings that are required by the Secretary of State and any political subdivisions of the State of Oklahoma and documentation that indicates the value of the applicant's capital if the capital must be surrendered upon separation from the company.
- (D) If the applicant is an owner of at least ten percent (10%) of the stock issued in a corporation, complete and current filings that are required by the Secretary of State and any political subdivisions of the State of Oklahoma or an affidavit from the secretary or an officer of the corporation other than the applicant that indicates the applicant's ownership interest in the corporation, and documentation that indicates the value of the applicant's stock must be surrendered upon separation from the corporation.
- (e) Prior to the approval of an application for or issuance of a Certificate of Non-Coverage by the Commissioner of Labor or a designee, all renewal applicants must provide:
 - (1) A copy of any documents from the List of Acceptable Documents that have been updated or amended;
 - (2) Copy of current filed profit & loss statement. If not filed, a copy of 1099's or w-2's.
 - (3) Current copy of Professional License;
 - (4) Copy of Certificate of Good Standing or proof that the corporation is current with the franchise tax.

- (f) Prior to the approval of an application for or issuance of a Certificate of Non-Coverage by the Commissioner of Labor or a designee, applicants may also provide
 - (1) a complete, current, and valid copy of at least one (1) item from each of the following categories:
 - (A) A business card, check, or invoice, and
 - (B) A published advertisement, telephone book listing, or utility bill.
 - (2) a complete, current, valid copy of any combination of these items to help substantiate the claimed exemption from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. Each applicant, however, shall have the burden of proof at all times.
- (g) If doubt about an applicant's eligibility remains after all requirements have been met, the Commissioner of Labor or a designee may require additional information or investigation prior to the approval of an application for or issuance of a Certificate of Non-Coverage. Each Certificate of Non-Coverage application shall be approved or denied based upon the applicant's degree and history of cooperation, compliance and eligibility in accordance with the provisions of Section 415.1 of Title 40 of the Oklahoma Statutes and 380:60-1-7 of the Oklahoma Administrative Code, and all documents provided and responses given to substantiate the claimed exemption from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes. If the Commissioner of Labor or a designee has not taken final action on a Certificate of Non-Coverage application within thirty (30) calendar days from the date of receipt, the application may be denied.
- (h) Only renewal applicants may appeal the denial of a Certificate of Non-Coverage by submitting a written request for reconsideration to the Commissioner of Labor or a designee within thirty (30) calendar days from the date of the denial notice. A written appeal must include a request for hearing. Once a request is received, a hearing will be set for that applicant to show cause why the denial was in error. The applicant always has the burden of proof.
- (i) At the discretion of the Commissioner of Labor or a designee, a standard Certificate of Non-Coverage, issued on or after October 15, 1999, is valid for two (2) years from the date of issuance and may be renewed in accordance with the provisions of Section 415.1 of Title 40 of the Oklahoma Statutes and 380:60-1-7 of the Oklahoma Administrative Code.
- (j) A Certificate of Non-Coverage must be produced on demand and, if revoked or suspended, shall immediately be surrendered to the Commissioner of Labor or a designee. A Certificate of Non-Coverage

may be revoked or suspended, after investigation, for the following reasons:

- (1) The holder is using the Certificate of Non-Coverage to work in an occupation or occupations for which the Certificate of Non-Coverage was not issued.
 - (2) The holder failed to report a material change in information provided on the Certificate of Non-Coverage application to the Commissioner of Labor or a designee within thirty (30) calendar days from the date of the change.
 - (3) The holder is a sole proprietor and is working on the same job or project with one (1) or more other sole proprietors and is performing the same craft.
 - (4) The holder failed to pay all fees charged in connection with the Certificate of Non-Coverage within thirty (30) calendar days from the date of issuance.
 - (5) The holder is working with one (1) or more employees who are covered by workers' compensation insurance and is performing the same or substantially similar duties.
 - (6) The holder failed to produce or surrender the Certificate of Non-Coverage to the commissioner of Labor or a designee as required.
 - (7) The holder is using the Certificate of Non-Coverage to work in an occupation or occupations when the holder is, in fact, an employee under Section 3 of Title 85 of the Oklahoma Statutes.
 - (8) The holder altered, misused, or tampered with the Certificate of Non-Coverage or allowed another to do so.
 - (9) Any other reason not specifically listed that constitutes cause for revocation or suspension by the Commissioner of Labor or a designee including, but not limited to, any other reason required by law or administrative rule.
- (k) The Commissioner of Labor or a designee shall return a suspended Certificate of Non-Coverage to the holder when all requirements for reinstatement have been met, unless the Certificate of Non-Coverage has expired. The Commissioner of Labor or a designee may cancel a Certificate of Non-Coverage after receipt of written notice from and return of the Certificate of Non-Coverage by the holder.
- (l) All actions to revoke, suspend, or deny a renewal application for a Certificate of Non-Coverage under the provisions of Section 415.1 of Title 40 of the Oklahoma Statutes and 380:60-1-7 of the Oklahoma Administrative Code shall be conducted in accordance with the Administrative Procedures Act and other applicable state and federal law.

AGENCY NOTE: Pursuant to Senate Bill 1X ("SB1X") of the 2005 Special Session and signed by the Governor on June 6, 2005, Section 415.1 of Title 40 of the Oklahoma Statutes

was repealed. Therefore, ODOL no longer has the authority to issue CNC Cards nor enforce Section 380:60-1-7 or Section 380:60-1-9.

380:60-1-8. Citation of employer

After verification that, within one (1) year prior to a Workers' Compensation Compliance Officer's visitation date, an employer failed to provide continuous workers' compensation insurance coverage as required by law and an employee illness, injury, or death occurred, the employer shall be cited and the maximum allowable civil penalty under the law will be assessed unless the employer can prove that the lapse in coverage that occurred was not the employer's fault.

380:60-1-9. 30-day certificate of non-coverage

- (a) Any applicant who, at the time of application, is unable to provide the necessary supporting documentation may request a 30-day Certificate. The applicant will still be required to complete and execute the application, and pay the required fee, prior to the issuance of a 30-day Certificate.
- (b) A 30-day Certificate will be valid for no more than 30 days from the date of issuance, and shall expire unless the applicant is approved for a standard CNC prior thereto.
- (c) If the required documentation is provided in a timely manner, and if it is subsequently determined that the applicant is eligible, a standard CNC will be issued to the applicant. If the 30-day Certificate was issued prior to October 15, 1999, the standard CNC shall expire one (1) year from the date the 30-day Certificate was issued. If the 30 day Certificate was issued on or after October 15, 1999, the standard CNC shall expire two (2) years from the date the 30-day Certificate was issued.

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