**Managing Subcontractor Workers Compensation Liability**

*NSW Example – Other states have similar legislation*

Under NSW Workers Compensation Legislation (Workers Compensation Act 1987; Workplace Injury Management & Workers Compensation Act 1998 and OH&S Act 2004) businesses have certain obligations to contractors that they engage. These need to be understood and managed within the context of the risk that they pose to an individual business.

* **OH&S Legislation** – every contractor on premises under your control needs to be provided with a safe work environment, safe system of work and adequate training. In this respect they need to be treated in the same manner as your employees. It is essential that a business keep records of workplace inductions, instructions given and that the copies of the contractors’ trade licenses are kept. If a contractor is employed by another business, ask them for a copy of their OH&S Policy and records of training relevant to their employees that attend your premises. Provide a copy of your OH&S Policy to those businesses that are regularly at your premises and keep a record of this.
* **Workers Compensation Legislation** - sets out circumstances in which a contractor may be considered an employee, and therefore need workers compensation insurance under your policy. In determining whether the contractor is a ***worker*** the insurance company will look at the following points and you should therefore keep records of these.
  + Is the contractor a company, partnership or sole trader?
  + Is the contractor’s work incidental to the business activity? (eg; cleaning or maintenance)
  + Does the contractor employ a person to do the work?
  + Does the contractor provide quotes for work?
  + Does the contractor supply any materials or provide their own equipment?
  + How often is the contractor working for this business?
  + Does the contractor have their own insurances (workers compensation, public liability, professional indemnity)?
* If contractors have their own insurances, a ‘Certificate of Currency’ is the necessary proof. This shows the insured name, the type of policy, the level of cover and the risks covered. You can check these details with the insurance company or in workers compensation matters by phoning WorkCover. You are within your rights to make payment of invoices or access to your premises conditional on certificates of currency being provided, so long as you advise the other party in writing. To ensure insurance currency, you should maintain a database of all “Certificates of Currency” and cease payment of invoices to contractors as soon as theirs lapse.