

## Is Your House Director an Independent Contractor or an Employee?

Many House Corporation Boards employ House Directors on a contractual basis: the House Director is paid a defined sum each month for the term of the contract. In other words, the House Director is an Independent Contractor.

There are pros and cons relating to this type of arrangement. The pros are simple: the House Corporation does not need to withhold payroll taxes or purchase workers compensation insurance for this person. The cons are more complex.

The Contract House Director is not afforded liability insurance protection under the Fraternity's insurance program. This results in an uninsurable exposure for the Contract House Director. As an example, if the Contract House Director's negligence resulted in a fire to the chapter house, the property insurance company would pay for the damages and potentially pursue subrogation against the Contract House Director as the assumption is that this person carries Liability Insurance. In addition, the Contract House Director could be named in a lawsuit by a member, candidate for membership or other 3rd party alleging the negligence of the Contract House Director resulted in some sort of bodily injury, property damage or personal injury to them.

In this scenario, the Contract House Director would NOT be covered under the Fraternity's Liability Insurance program. Thus, s/he becomes personally liable for hiring an attorney to answer the lawsuit and defend her/him as well as pay any judgment awarded by a jury or court. Even if the lawsuit had no legitimate basis, the Contract House Director would incur the cost to retain an attorney to answer the complaint and defend her/him at least until which time s/he is removed as a defendant in the matter.



The other main disadvantage is that the Contract House Director is not an employee, and as this individual is not covered under Workers Compensation Insurance, s/he would be in a position to pursue a liability claim against the Fraternity if s/he was injured while performing her/his duties if it resulted due to the negligence of the Fraternity, Chapter, House Corporation etc. If the House Director was covered under Workers Compensation Insurance, this option would not be available to her/him, as Workers Compensation Insurance contains an "Exclusive Remedy Rule." This means an employee who is injured while performing their assigned duties is eligible to receive Workers Compensation benefits, but is barred from also pursuing a liability claim against the employer.

Given these facts, we recommend the following:

1. The Contract House Director should obtain liability insurance. We recommend that s/he contact a personal insurance agent and inquire about purchasing a Renter's policy, which would provide coverage for her/his own personal property and also liability insurance. Typically, Renter's policies are not intended to provide protection for Independent Contractors; however, given this particular arrangement, it may be possible to attach a "Business Pursuits" endorsement of some sort to it, to provide the necessary liability insurance for her/him. It is important that the Contract House Director be up front regarding the arrangement to ensure the coverages are appropriate and will protect her/him if a liability issue arises at a later date.

2. If a Renter's policy will not work, the House Director should inquire about a Business Owners Package Policy (BOPP) policy. These policies provide both property and liability insurance for small business owners and will likely work for the Contract House Director. The real issue will be the cost. More than likely, the Contract House Director will be charged the minimum premium. This premium will vary depending on company and state, but could be as inexpensive as \$500.

3. A third option, if necessary, is to inquire about a mono-line Commercial General Liability (CGL) policy. Typically, a BOPP policy can be placed to cover this exposure; however, if not, inquire about a CGL policy. The disadvantage of purchasing a CGL policy is that it will likely be more expensive than a BOPP policy.

4. The final option is to change the arrangement and actually make the Contract House Director an employee of the House Corporation. If this is done, s/he will be considered an insured under the Fraternity's Liability Insurance Program, which alleviates the need to purchase it for her/him. Although this is the case, a Workers Compensation Insurance policy will need to be purchased for her/him and there are obviously payroll and tax implications. In some situations, this may make more sense than classifying the House Director as an Independent Contractor.

Making the House Director an employee might be the best solution. It provides them liability protection and the House Corporation is insulated from a liability claim. For more details, we urge you to discuss this with your CPA or tax attorney.



Willis offers this educational information to provoke thought and discussion and it should not to be viewed as a mandate or requirement. We view part of our role as an insurance and risk management professional to anticipate your needs and educate you in an effort to complement the organization's loss prevention and control efforts, not replace the decision making autonomy of our client organizations. We hope you find this educational piece to be of value and stand ready to discuss it further with you or any of your constituents.

If you have any questions or need additional assistance regarding this issue, please contact Mick McGill, Client Advocate at 1-800-736-4327 ext. 229 or by email at [mmcgill@willis.com](mailto:mmcgill@willis.com).