

*The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Advisory Opinion is not legally binding on the Department of Insurance or the reader.*

Kentucky Department of Insurance

Advisory Opinion 99-13

TO: All Property and Casualty Carriers Writing Workers' Compensation Coverage

In Re: Waiver of Our Right to Recover From Others Endorsements (NCCI Form WC 00 0113)

RELEVANT STATUTES: KRS 342.700 provides that it is contrary to public policy and unlawful for any owner / employer to require another employer to waive its remedies as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, an owner or employer may not give consideration to whether one (1) contractor or supplier voluntarily waives its remedies under this statute or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

THE DEPARTMENT'S POSITION: The Department of Workers' Claims has advised us that they now interpret KRS 342.700 (3) to prohibit all waivers of subrogation, whether or not entered into on a voluntary basis. Based upon the Department of Workers' Claims' interpretation, the Department of Insurance will no longer approve forms or rates that include a waiver of subrogation for worker's compensation insurance. The National Council on Compensation Insurance has agreed to withdraw its "Waiver of Our Right to Recover from Others" endorsement. All carriers having similar waivers on file should immediately withdraw them.

Any questions can be addressed to Ellen Navolio, Director of the Property and Casualty Division, at (502)-564-6046, or to the Department's legal counsel, Lawrence W. Cook at (502) 564-6032.