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NOTICE TO ALL INSURERS, ADMITTED TO WRITE OR WRITING WORKERS' COMPENSATION COVERAGES IN CALIFORNIA, REGARDING CHANGES IN DEFINITIONS OF EMPLOYEE AND EXCLUSIONS TO THE DEFINITION OF EMPLOYEE (OFFICERS AND MEMBERS OF BOARDS OF DIRECTORS, AND PARTNERS) EFFECTIVE JANUARY 1, 2017 AS A RESULT OF ENACTMENT OF AB 2833

As of the date of this notice, existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition, among other persons, officers and directors of a private corporation who are the sole shareholders of the corporation and working members of a partnership or limited liability company, as specified, unless they elect to come under the compensation provisions of the laws governing workers' compensation.

Effective January 1, 2017, AB 2883 (Assembly Insurance Committee), makes certain changes to the definition of employee and exclusions to the definition of employee set forth in sections 3351 and 3352 of the Labor Code. Specifically, unless an officer or member of the board of directors who owns at least 15 percent of the issued and outstanding stock of corporation, or an individual who is a general partner of a partnership or a managing member of a limited liability company executes a written waiver of his or her rights under the Labor Code stating under penalty of perjury that the person is a qualifying officer or director or a qualifying general partner or managing member, that person will be considered an employee for whom insurance coverage is required. AB 2883 also amends Labor Code Section 3352 to provide that if a waiver is executed, the waiver "shall be effective upon the date of receipt and acceptance by the ... insurance carrier"

Please be advised that the provisions of AB 2883 are applicable to all in-force policies as of January 1, 2017, and that unless a duly executed waiver is received and accepted by the insurance carrier on or before January 1, 2017, any individual that had been

exempted from coverage under the workers' compensation policy as an officer or member of the board of directors of a corporation, or an individual who is a general partner of a partnership or a managing member of a limited liability company, will need to be added to the coverage provided by the insurer until such time as a duly executed waiver is received and accepted by the insurer. Both the Department and the Department of Industrial Relations (DIR) have concluded that because AB 2883 does not exempt in force policies, on its effective date of January 1, 2017, AB 2883 applies to all in force policies. The Department recognizes that this law may require mid-term changes to in-force policies that are inconsistent with how the policies were marketed to the employers. Nevertheless, regardless whether the insurer decides to actually collect premium for a reasonable transition period commencing January 1, 2017 (not to exceed 90-days), for such additions to the policy, in order to effectively implement this change in law, the Department will expect insurers to take the following actions:

- Provide as soon as possible, but in no event later than November 15, 2016, an advisory/explanatory notice, with a copy of the waiver form to each employer that may have employees affected by this change in law. For your reference and use, a sample waiver for prepared by the DIR is attached, and
- Create an acknowledgement process to provide insureds with the date of receipt and acceptance of the waiver(s), and
- Determine and report to the WCIRB, consistent with existing practices, the premium and loss experience associated with officers or members of the board of directors of a corporation, or individuals who are general partners of a partnership or managing members of a limited liability company who have not executed a waiver as covered employees, and
- Pay premium tax and assessments associated with such additional premium.

If you have any questions concerning this notice, please contact Patricia Hein, Attorney IV, California Department of Insurance, e-mail at: Patricia.Hein@insurance.ca.gov.

John F. Finston
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