**DEPARTMENT OF INSURANCE**
**Office of the Commissioner**
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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 2883**

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, officers and members
of boards of directors while rendering actual service for the corporation for pay will be
covered employees unless the officer or member of the board of directors owns at least
15 percent of the issued and outstanding stock of corporation and 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.  Similarly, working members of a partnership or
limited liability company receiving wages irrespective of profits from the partnership or
limited liability company will be covered employees unless the individual is a general
partner of a partnership or a managing member of a limited liability company and
executes a written waiver of his or her rights under the Labor Code stating under
penalty of perjury that the person is a qualifying general partner or managing
member.  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, including but not limited to, 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 of 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 who are currently excluded from coverage and may be affected by this change in law.  For your reference and use, a sample waiver form 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. Questions concerning the sample waiver may be directed to the DIR at: AB2883@dir.ca.gov.


John F. Finston
General Counsel & Deputy Commissioner

<u>**SAMPLE WAIVER FORM**</u>

**Insured Name:**
**Insurer:**
**Policy No.:**

<u>**CORPORATE OFFICERS/DIRECTORS - WAIVER OF WORKERS'COMPENSATION COVERAGE**</u>

Pursuant to California Labor Code section 3352(p), I hereby certify, under penalty of perjury, that I am an officer or director of the above-named insured, which is a quasi-public or private corporation, and that I own at least 15 percent (15%) of the issued and outstanding stock of the above-named insured corporation.  As a qualifying officer or director, I elect to be excluded from the corporation's workers' compensation insurance policy with the above-referenced insurer.  I understand and agree that this written waiver will be effective upon the date of receipt and acceptance by the corporation's insurer and it shall remain in effect until I provide the insurer with a written withdrawal of this waiver.  I understand and agree that by signing this waiver, I will not be entitled to coverage under the insured's workers' compensation policy with the above-referenced insurer if an employment-related injury occurs.

_____          _____
PRINT OFFICER'S/DIRECTOR'S FULL NAME                           TITLE

_____          _____
OFFICER/DIRECTOR SIGNATURE                                       DATE

ACCEPTED:

_____          _____
[Insurance Company]                                        DATE

**NOTE TO EMPLOYER:  The exclusion will be endorsed to the policy upon our receipt and acceptance of a signed and properly completed form.  The person electing exclusion must sign this form.  Company representatives may not sign on behalf of the individual.  One exclusion per form.  Submit additional forms if needed.**

**Submit forms to:  xxx**

**<u>SAMPLE WAIVER FORM</u>**

**Insured Name:**
**Insurer:**
**Policy No.:**


**<u>GENERAL PARTNERS AND LLC MANAGING MEMBERS - WAIVER OF WORKERS'</u>**
**<u>COMPENSATION COVERAGE</u>**

Pursuant to California Labor Code section 3352(q), I hereby certify, under penalty of perjury, that I am a general partner (if the insured is a partnership) or a managing member (if the insured is a limited liability company) of the above-named insured.  As a qualifying general partner or managing member, I elect to be excluded from the insured's workers' compensation insurance policy with the above-referenced insurer.  I understand and agree that this written waiver will be effective upon the date of receipt and acceptance by the partnership's or limited liability company's insurer and it shall remain in effect until I provide the insurer with a written withdrawal of this waiver.  I understand and agree that by signing this waiver, I will not be entitled to coverage under the insured's workers' compensation insurance policy with the above-referenced insurer if an employment-related injury occurs.


_____          _____
PRINT GENERAL PARTNER'S/                                                    TITLE
MANAGING MEMBER'S FULL NAME


_____          _____
GENERAL PARTNER/MANAGING MEMBER                            DATE
SIGNATURE



ACCEPTED:

_____          _____
[Insurance Company]                                                         DATE

**NOTE TO EMPLOYER:  The exclusion will be endorsed to the policy upon our receipt and acceptance of a signed and properly completed form.  The person electing exclusion must sign this form.  Company representatives may not sign on behalf of the individual.  One exclusion per form.  Submit additional forms if needed.**


**Submit forms to:  xxx**