AB 2883: CA WORKERS’ COMPENSATION NEW WAIVER RULES
Officer, Director, Partner and Managing Member Exclusion Process Changing

San Diego, November 10, 2016 – Effective January 1, 2017, changes will be made to the California workers’ compensation officer, director, partner, and managing member exclusion rules. It is important to note the changes will apply to all new, renewal, and inforce policies as of January 1, 2017.

Existing Rules
Under the existing law, if the officers and directors of a private corporation are the sole shareholders of the corporation, they come under the workers compensation provisions by election only. Likewise, where the working members of a partnership or limited liability company (LLC) are general partners or managers, the partners or managers come under the workers’ compensation provisions by election only.

New Rules
Under the new law, only the officers and directors of a private corporation who own at least 15% of the issued and outstanding stock of the corporation can be excluded from coverage by executing a written waiver. Those officers and directors with less than 15% ownership can no longer be excluded.

All working members of a partnership or LLC receiving wages come under the workers’ compensation provisions. An individual who is a general partner of a partnership or a managing member of a limited liability company must execute a written waiver to be excluded.

The waiver shall be effective upon the date of receipt and acceptance by the insured’s insurance carrier, and shall remain effective until the carrier receives a written withdrawal of the waiver.

Failure to Act
If an officer or director with 15% or more ownership, a general partner of a partnership, or a managing member of a limited liability company does not provide a signed waiver, they will be considered an employee, and a premium charge will result based on the payroll rules of California. Officer’s minimum and maximum rules would still apply.

Next Steps
Workers’ compensation carriers have begun sending policyholders a letter containing the details of the new rules and required waiver. In order to maintain existing exclusions, it is imperative your carrier receives the completed and signed waiver for each eligible individual electing exclusion as soon as possible, but no later than December 31, 2016.

For questions on the new rule, please contact your Barney & Barney team to discuss how the upcoming changes may impact your current workers’ compensation policy.

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The following page highlights scenarios of how the provisions of the new rule may impact an organization.
The New Rule in Action
As noted on the previous page, the new rules apply to all new, renewal, and inforce policies as of January 1, 2017. In order to demonstrate how the new rules impact an organization, consider the following examples:

EXAMPLE 1:
An officer of a private company owns 15% of the issued and outstanding stock and is currently excluded on a policy with a policy effective date of July 1, 2016 through July 1, 2017.

Impact of new rule: If the carrier does not receive a valid waiver by January 1, 2017, the officer will be considered an employee and his/her payroll will be included in the premium calculation through the end of the policy. If the carrier receives the waiver on February 1, for example, the new officer exclusion will be applied at that time. The insured will pay premium associated with that officer’s payroll for the month of January, before the waiver was submitted and received.

EXAMPLE 2:
Ten officers of a private company each own 10% of the outstanding stock.

Impact of new rule: None of the officers can be excluded. The new minimum ownership amount to qualify for exclusion is 15%.

EXAMPLE 3:
Thirty managing members of a limited liability company each have 3.33% ownership.

Impact of new rule: All thirty managing members can elect to be excluded with a properly submitted waiver prior to the December 31, 2016 deadline for a policy currently inforce.