

## FARMING & WORKER'S COMPENSATION IN WISCONSIN

Most Wisconsin employers are subject to the Worker's Compensation Act (Act), including the requirement to obtain **Worker's Compensation insurance. But, there are exceptions to this principle of universal coverage, including:**

- Are broader for *farmers* than for non-farm employers.
- Are broader for *family farm corporations* than for other farmers.
- Allow certain religious sects such as the Amish or Mennonites to choose alternative benefits consistent with their standard of living.

**Non-Farm Employers Required to Insure.** A non-farm employer who usually employs 3 or more full-time or part-time employees becomes subject to the Act and is required to obtain insurance. An employer who pays combined gross wages of \$500 or more in a calendar quarter is also required to obtain insurance.

**Farmers Required to Insure.** There is no wage threshold for farmers. It does not matter how much a farmer pays in wages. What matters is the number of employees, after excluding certain employees who are family members, relatives or "exchanged workers" as described in more detail below.

For farmers, the threshold is 6 employees, not 3 employees. However, farmers are not required to obtain insurance unless they have 6 or more employees on at least 20 days during a calendar year. After the 20th day, farmers have 10 days to obtain insurance.

- A calendar year starts on January 1st and ends on December 31st.
- The 20 days do not have to be consecutive.
- On each of the 20 days, it can be the same 6 employees or 6 different employees.
- The 6 employees may be full-time or part-time.
- The 6 employees may be at more than one location within the state.
- Certain relatives are not counted in determining whether there are 6 employees.

**Example #1:** Farmer Pat had 5 employees every day in January and February. Pat had 6 employees on 17 dates in March and 5 employees every day from April through December.

**Analysis:** In January, February and April through December Pat had 5 employees every day, but none of those days count toward the 20-day threshold because there is no day that Pat had 6 employees. Pat had 6 employees on only 17 days during the calendar year and therefore, is not required to obtain a worker's compensation insurance policy.

**Example #2:** Farmer Chris had no employees in January or February. Chris had 6 employees (4 worked full-time and 2 worked part-time) on 3 dates in March, on 7 dates in April, on 9 dates in May, and on 10 dates in June, starting on June 3rd.

**Analysis:** In March, April and May there were 19 total days on which Chris had 6 employees. Any combination of new, old, part-time or full-time employees are counted the same way. June 3rd is the 20th day during the calendar year on which Chris had 6 employees. This means that 10 days later, on June 13th, Chris is subject to the Worker's Compensation Act. Chris must have a worker's compensation policy in force by June 13th.

## **Frequently Asked Questions**

### **1. Who is a farmer?**

Answer: The statutory definitions of farming,<sup>1</sup> farm premises,<sup>2</sup> farm operations<sup>3</sup> and farmers<sup>4</sup> are extremely broad. The law has a long list of farm operations related to plant and animal commodities that cover everything from cultivating, breeding, tending, raising, training, managing and harvesting--to processing, drying, packing, packaging, freezing, grading, storing, delivering, distributing, or marketing. The law also says that farming shall also include “any other activities commonly considered to be farming whether conducted on or off (farm) premises.”

### **2. What if I rent?**

Answer: It makes no difference whether the farmer owns or rents the farm premises. The same broad exemptions from the requirement to obtain insurance apply.

### **3. What if I don't make a profit?**

Answer: It does not matter. There is no requirement that the farmer actually succeed in raising any crop, animal, animal product, or commodity.

### **4. What about logging?**

Answer: “Logging, lumbering or wood cutting” operations are not, *by themselves* considered farm operations. However, if they are done as part of other farm operations, they are considered farm operations for all worker's compensation purposes. On the other hand, clearing farm premises, salvaging dead timber and managing and using wood lots are, *by themselves*, considered farming. They are not considered “logging, lumbering or wood cutting.”

### **5. What about people who provide services to farmers?**

Answer: Commercial threshers, clover hullers, silo fillers, corn shredders, and other employers who work for farmers are not considered to be engaged in farming operations. These contractors become subject to the Worker's Compensation Act like any other *non-farm* employer. These employers and their employees are not counted for purposes of determining whether a farmer has 6 employees.

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<sup>1</sup> “Farming” means the operation of farm premises owned or rented by the operator. [s. 102.04(3), Wis. Stats.]

<sup>2</sup> “Farm premises” means areas used for operations listed in footnote 3 but does not include other areas, greenhouses or similar structures unless used principally for the production of food and farm plants. [s. 102.04(3), Wis. Stats.]

<sup>3</sup> Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products, thereon; the processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon; the clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations; the managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of use of equipment with other farms in pursuing such activities. The operation for not to exceed 30 days during any calendar year, by any person deriving the person's principal income from farming, of farm machinery in performing farming services for other farms for a consideration other than exchange of labor shall be deemed farming. Operation of such premises shall be deemed to include also any other activities commonly considered to be farming whether conducted on or off such premises by the farm operator. [s. 102.04(3), Stats.]

<sup>4</sup> “Farmer” means any person engaged in farming as defined in footnotes 1 to 3. [s. 102.04(3), Wis. Stats.]

**6. What about relatives of a farmer?**

Answer:

A. **Eligibility for benefits.** The most important thing to remember is that the special rules for relatives relate only to *counting*, not to *benefits* or insurance *premiums*. Put simply, all these rules mean is that certain relatives are not counted when deciding whether a farmer has crossed the 6-employee threshold.

However, once it is determined that a farmer is subject to the Worker’s Compensation Act--at which time the farmer must obtain insurance--then *all* employees of the farmer (including *all* the relatives who were not counted for purposes of determining whether that insurance was required) are covered under that policy. This means, quite properly, that the farmer’s insurance premiums will be based on *all* wages paid by the farmer to *all* employees--including these relatives.

B. **Counting toward the 6-employee threshold.** When determining whether a farmer has 6 or more employees, the law says that certain direct ancestors and descendants of the farmer (“lineal” relatives) and certain more distant familial relatives and in-laws (“collateral” relatives) shall not be counted. The list in Table 1 applies to all farmers. For purposes of counting, these relatives are not employees.

**Table 1-Farmers**

Farmer’s Relatives That Are Not Counted as the Farmer’s Employees	
Parent	Spouse
Child	Sister-in-law or Brother-in-law
Brother	Daughter-in-law or Son-in-law
Sister	Mother-in-law or Father-in-law

If the farm operation is a **sole proprietorship**, the relatives of the owner listed in Table 1 are not counted when counting the number of employees.

If the farm operation is a **partnership**, the relatives of a partner listed in Table 1 are not counted when counting the number of employees.

If the farm operation is a **limited liability company**, the relatives of a member of the limited liability company listed in Table 1 are not counted when counting the number of employees.

If the farm is a **family farm corporation**,<sup>5</sup> relatives of a shareholder listed in Table 1 are not counted when counting the number of employees.

**Important Note:** If the farm is a **corporation**, (where all shareholders are not related as lineal ancestors or descendants) all employees including the relatives of a shareholder listed in Table 1 **are counted** when counting the number of employees.

<sup>5</sup> A “family farm corporation” means a corporation engaged in farming **all** of whose shareholders are related as lineal ancestors or lineal descendants, or as spouses, brothers, sisters, uncles, aunts, cousins or in-laws (listed in Table 1) of such lineal ancestor or descendant. [s. 102.07(5) (c), Wis. Stats.]

**7. I recently was required to get a worker's compensation policy for my farm operation. Can I exclude my relatives from coverage under the policy?**

Answer: No, relatives cannot be excluded from coverage. The policy covers all employees including your relatives. Insurance premium will be charged on all of your employee's wages including any relatives that work for you. Only two corporate officers of a closely held corporation and members of a qualified religious sect who are certified for exemption by the department may be excluded from coverage. All other employees are covered.

**8. What about the religious sect exemption?**

Answer: Employers may apply for an exemption from the duty to insure workers who belong to a religious sect, such as Amish or Mennonites, whose tenets and teachings oppose accepting benefits of any public or private insurance payments for death, disability, old age, retirement or that makes payments towards the cost of medical care, including federal social security benefits.

The exemption is not automatic. It applies only if all the following occur: (1) the employer applies for an exemption (2) the religious sect has a long standing history (25 years is presumed to be long-standing history) of providing its members who become dependent on the sect as a result of work-related injuries, with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect (3) the worker waives his or her rights to WC and requests an exemption (4) the religious sect agrees to pay benefits at a reasonable standard of living and medical treatment when compared to the general standards for members of the sect. To qualify for this exemption, employers must apply to the WC Division. Contact the WC Division to request the religious sect exemption forms and related informational materials

**9. Can a farmer voluntarily obtain worker's compensation insurance?**

Answer: Yes, all employers, including farmers, may voluntarily elect coverage for themselves or their employees. In the event of a work-injury, they are eligible for all medical, wage and other worker's compensation benefits, without regard to who was at fault in causing the injury. The voluntary purchase of a worker's compensation policy also protects the employer from most civil tort actions by employees related to the work-injury. With few exceptions, where the employer has the worker's compensation insurance coverage in place, an injured worker is limited to the benefits to which he or she is legally entitled under the Worker's Compensation Act.

**10. I thought I was subject to the Act, so I took out a policy. Now, I find out I was never required to have coverage. What can I do?**

Answer: Whenever anyone voluntarily elects coverage, whether purposely or by mistake--and assuming that during the period for which voluntary coverage is obtained the farmer does not otherwise become subject to the Act by having 6 or more employees on 20 days during a calendar year--the person may cancel that policy at any time. There is no waiting period.

**11. My neighbor and I are farmers who, together with our crews, often work together on an exchange basis on each other's farms. Do I count my neighbor's employees as my employees when they are working on my farm?**

Answer: A special law applies to farmers who exchange workers. For purposes of *counting*, your neighbor and his or her employees are not counted toward your 6-employee threshold. Your neighbor's employees are counted only by your neighbor to determine whether he or she has 6 employees on 20 days and is subject to the Act.

**12. Once a farmer is required to get insurance, how long does he or she have to keep it?**

Answer: Quite a while. Once a farmer is required to obtain insurance, even if he or she permanently drops below 6 employees, the farmer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--before he or she is eligible to withdraw from being subject to the provisions of the Act.

Once the farmer has gone a full calendar year without employing 6 or more employees on 20 days, the farmer may drop insurance coverage by first filing a notice of withdrawal with the Worker's Compensation Division, and then waiting 30 days. If the withdrawal is approved by the Department, the farmer must notify the insurance carrier of the date he or she wants the coverage cancelled. If, for some reason, the farmer wants to drop coverage more than 30 days later, the later date should be specified in the notice of withdrawal. Farmers should contact the Worker's Compensation Division for the necessary withdrawal forms.

**Example: On July 8, 2016, Farmer Pat drops from 25 employees to 5 employees. During the rest of 2016 there are 23 dates on which Pat has 6 or more employees. In 2017, there are only 19 days on which Pat has 6 or more employees. What is the earliest date Pat can drop the insurance coverage?**

**Analysis: The 23 days in 2016 after July 8th are irrelevant. What matters is that during 2017 Pat did not have 6 employees on 20 days. The earliest Pat is eligible to file a notice of withdrawal is January 1, 2018. January 1st is a holiday and state offices are closed. The earliest the notice can be received by the Worker's Compensation Division is January 2, 2018. The earliest the insurance coverage can be cancelled is 30 days later, or February 1, 2018.**

**13. What happens if I don't carry a worker's compensation policy when I am supposed to?**

Answer: A farmer who fails to have insurance coverage when he or she is subject to the law will be penalized the same as any other employer.

Farmers who are subject to the law, but do not carry worker's compensation insurance, are personally responsible for the terms of the Worker's Compensation Act. If a worker is injured, the employer is personally liable, and the usual personal exemptions of property from seizure and sale on execution of a judgment do not apply.

Farmers who are not subject to the law and do not carry worker's compensation insurance may be sued in a civil action for damages by an employee who is injured while at work.

**14. What's the penalty for failure to carry worker's compensation?**

Answer: The penalty is twice the amount of the premium not paid during an uninsured time period, or \$750, whichever is greater.

Under certain circumstances, an employer who has a lapse in worker's compensation coverage of 7 days or less can be subject to a penalty of \$100 for each day he or she is uninsured, up to a total of 7 days (\$700).

In addition, an uninsured employer is personally liable for reimbursement to the Uninsured Employers Fund for benefit payments made by the Fund under section 102.81(1) of the Wisconsin Statutes to an injured employee (or the employee's dependents) of the uninsured employer. (See section 102.82(1) of the Wisconsin Statutes.) The penalties and reimbursements to the Fund are mandatory and non-negotiable.

### 15. How can I get more information about worker's compensation?

Answer: Contact the Wisconsin Department of Workforce Development - Worker's Compensation Division, Bureau of Insurance Programs in-person at GEF-1 State Office Building, Room C100, 201 E. Washington Avenue, Madison by mail at P.O. Box 7901, Madison, WI 53707-7901 or by phone at (608) 266-3046. The Division also offers information online at: <http://dwd.wisconsin.gov/wc>

DWD is an equal opportunity employer and service provider. If you have a disability and need assistance with this information, please dial 7-1-1 for Wisconsin Relay Service. Please contact the Worker's Compensation Division at (608) 266-1340 to request information in an alternate format, including translated to another language.

The Division also produces a variety of printed informational materials to help employers and workers better understand and comply with the WC law. Single copies are available for free upon request. Among the most often-requested are these:

- **Facts for Employers About the Wisconsin Worker's Compensation Law** (Publication # WKC-7317). This pamphlet is issued by the WC Division.
- **Worker's Compensation Reporting Requirements** (Publication # WKC-7802). This pamphlet is issued by the WC Division.
- **Facts for Injured Workers** (Publication # WKC-18-P). This pamphlet is issued by the WC Division.
- The Commissioner of Insurance (P.O. Box 7873, Madison, WI 53707-7873) also produces the **Consumer's Guide to Worker's Compensation Insurance for Employers** (Publication # PI-065).

### 16. What is the Wisconsin Farming Operation Worker's Compensation Insurance Worksheet?

Answer: On the following two pages you will find a *Wisconsin Farming Operation Worker's Compensation Insurance Worksheet* (a sample worksheet and a blank worksheet) to help you determine if you employ enough employees on enough days in a year to require worker's compensation insurance.

1. For each day fill in the number of employees that worked on the farm during the 24 hour period (midnight to midnight). Do not count the sole proprietor, partners, members of limited liability companies, shareholders of a family farm corporation or his or her relatives, defined as, parent, spouse, child, brother, sister, son & daughter-in-law, father & mother-in-law and brother & sister-in-law.
2. Circle each day that you have 6 or more employees. Keep a running total of the number of days circled.
3. When you reach 20 days with 6 or more employees, you must have a worker's compensation policy in force within 10 days.
4. If it appears that you are going to reach the 20 day threshold of having 6 or more employees, you should contact your insurance agent to ensure that insurance coverage will be in effect when required.

## Wisconsin Farming Operation Worker's Compensation Insurance Worksheet

Date	January	February	March	April	May	June	July	August	September	October	November	December
1	0	2	3	4	2							
2	0	2	10	3	2							
3	0	2	3	3	2							
4	0	2	9	3	2							
5	7	2	2	15	4							
6	2	8	7	3	4							
7	2	2	2	3	4							
8	2	2	4	3	4							
9	7	2	3	6	2							
10	2	2	3	2	2							
11	2	2	7	5	2							
12	0	2	3	5	3							
13	0	2	8	4	3							
14	3	6	3	3	3							
15	3	5	10	3	9							
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17	3	2	5	5								
18	3	1	5	5								
19	7	2	7	9								
20	2	0	5	5								
21	2	0	5	4								
22	2	3	7	3								
23	6	3	4	4								
24	2	2	4	4								
25	2	3	7	4								
26	2	3	5	3								
27	2	2	4	3								
28	2	2	4	3								
29	0		4	3								
30	1		3	5								
31	2		3									
<b>Running Total of Days</b>	<b>5</b>	<b>7</b>	<b>16</b>	<b>19</b>	<b>20</b>							

Sample

The 20th day with 6 or more employees working on the same day was reached on May 15.

A worker's compensation insurance policy must be in force within 10 days or by May 25.

Worker's compensation insurance policy required on May 25

A farmer who has 6 or more employees working on the same day for 20 days (consecutive or non consecutive) during a calendar year, becomes subject to the WC Act on the 20<sup>th</sup> day and must have a worker's compensation insurance policy in force within 10 days. A calendar year is January through December.

1. For each day fill in the number of employees that worked on the farm (at one or more locations) during the 24 hour period (midnight to midnight). Do not count the sole proprietor, partners, members of limited liability companies, shareholders of a family farm corporation or his or her relatives, defined as, parent, spouse, child, brother, sister, son & daughter-in-law, father & mother-in-law and brother and sister-in-law.
2. Circle each day that you have 6 or more employees. Keep a running total of the number of days circled.
3. When you reach 20 days with 6 or more employees, you must have a worker's compensation policy in force within 10 days.

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Date	January	February	March	April	May	June	July	August	September	October	November	December
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<b>Running Total of Days</b>												

A farmer who has 6 or more employees working on the same day for 20 days (consecutive or non consecutive) during a calendar year, becomes subject to the WC Act on the 20<sup>th</sup> day and must have a worker's compensation insurance policy in force within 10 days. A calendar year is January through December.

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