

WORKER'S COMPENSATION INSURANCE REQUIREMENTS IN WISCONSIN

1. As an employer, when am I required to carry worker's compensation insurance?

Under the Worker's Compensation Act (Act), you must carry worker's compensation insurance if you do any one of the following:

1. Employ 3 or more full-time or part-time employees. You must have insurance on the day you employ the third person.
2. Employ 1 or more full-time or part-time employees to whom you have paid combined gross wages of \$500 or more in any calendar quarter for work done at one or more locations in Wisconsin. You must have insurance by the 10th day of the first month of the next calendar quarter.
3. If you are a farmer who employs 6 or more workers on the same day for any 20 days during the calendar year. You must have insurance by the 10th day after the 20th day of employment. A calendar year is January through December. Some relatives of farmers may not count as employees.

2. Must out-of-state employers carry Wisconsin worker's compensation insurance?

Yes, you must carry the insurance if you have employees working in Wisconsin. The policy must be with an insurance company licensed to write worker's compensation in Wisconsin and endorsed to name Wisconsin as a covered state in section 3-A. Your insurance company must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau. The Bureau's mailing address is P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The telephone number is (262) 796-4540. The Bureau's internet address is <http://www.wcrb.org>

3. Who is considered an employee and covered by the Worker's Compensation Act?

Nearly all private and public employees in Wisconsin are considered employees and covered under the Act, including:

- **Part-Time Employees:** Whether an employee works part-time or full-time has no bearing on the requirement to carry worker's compensation insurance.
- **Family Members:** An employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance (except for certain relatives of a farmer).
- **Minors:** An employee's age has no bearing on the requirement to carry worker's compensation insurance.
- **Corporate Officers:** A corporate officer is considered an employee and is covered by the Act.

4. Who is not considered an employee under the Worker's Compensation Act?

The following are the only workers who are not considered employees under the Act. Call us if you are not sure.

- Domestic servants.
- Any person whose employment is not in the trade, business, profession or occupation of the employer.
- Some farm employees (certain relatives of a farmer).
- Sole proprietors, partners and members of limited liability companies.
- Qualified and certified members of certain religious sects.
- Volunteers of non-profit organizations receiving salary or in-kind compensation totaling not more than \$10 per week.
- Employees of Native American tribal enterprises, including casinos, unless the tribe elects to waive its sovereign immunity and voluntarily become subject to the Act.
- Real estate brokers, agents and salespersons that satisfy the 2 elements pursuant to s. 452.38, Wis. Stats.

All worker's compensation policies exclude sole proprietors, partners or members of limited liability companies, unless there is a specific written endorsement to include them. Sole proprietors, partners and members of limited liability companies may voluntarily purchase worker's compensation insurance to cover their own work-related injuries and illnesses.

5. What about independent contractors?

Under the Act, a person is required to meet a 9-part test before he or she is considered an independent contractor rather than an employee. A person is not an independent contractor for worker's compensation purposes just because the person says they are, or because the contractor over them says so, or because they both say so, or even if other regulators, including the federal government and other state agencies, say so. The 9-part statutory test set forth under s. 102.07(8), Wis. Stats., must be met before a person working under another person is considered not to be an employee.

6. What about corporations and corporate officers?

All worker's compensation policies covering corporations include corporate officers. However, in a closely held corporation, defined as a corporation with not more than 10 shareholders, no more than 2 officers may exclude themselves from coverage. If the corporation has other employees, and/or officers, an insurance policy is required and the exclusion for officers must be made by endorsement on the worker's compensation policy. The name(s) of the officer(s) must be given. The exclusion will remain in effect for the policy period. Officers who are excluded will still be counted in determining whether the employer is subject to the Act under s. 102.04(1)(b), Wis. Stats.

If a closely held corporation has no more than 2 corporate officers and has no other employees, a worker's compensation policy is not required if both officers elect not to be subject to the Act by completing and filing with the Department a Corporate Officer Option Notice. **A qualified corporation must complete and return a copy of the Corporate Officer Option Notice found on page 3.** Attach the completed notice to the Employer's Report form on pages 1 & 2 and mail or fax it to us within 15 days. **Note:** A corporation with more than two corporate officers or any other employee or employees is not eligible to file a Corporate Officer Option Notice with the department and must obtain and/or maintain a worker's compensation insurance policy.

7. What penalties may I receive for not carrying worker's compensation insurance?

We must and do enforce mandatory penalties if an employer does not obtain and maintain a worker's compensation insurance policy when required to have one. If you do not comply, you risk one or all of the following:

- You are subject to a penalty of double the insurance premiums you should have been paying during the uninsured period, or \$750, whichever is greater. Under certain circumstances, you may be subject to a penalty of \$100 for each day you're uninsured up to 7 days. (ss. 102.82(2)(a) and 102.82(2)(ag), Wis. Stats.)
- You face closure of your business, including a suspension of all operations. (s. 102.28(4), Wis. Stats.)
- You are personally liable for uninsured benefit claims for which your injured employees are eligible. (s. 102.28(5), Wis. Stats.)

8. How do I obtain worker's compensation insurance?

To obtain worker's compensation insurance, contact an insurance company or its agent and ask whether the company writes worker's compensation insurance for Wisconsin. If you have or know an insurance agent, you may contact him or her. If you are refused insurance coverage by a company, you may obtain coverage from the Wisconsin Compensation Rating Bureau through the Worker's Compensation Insurance Pool upon prepayment of premium. The Wisconsin Compensation Rating Bureau is located at 20700 Swenson Drive, Suite 100, Waukesha, Wisconsin. The mailing address is P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The telephone number is (262) 796-4540. The Bureau's internet address is <http://www.wcrb.org>

Note: The Wisconsin Compensation Rating Bureau *is not a State agency* and is not part of the Wisconsin Worker's Compensation Division. The State of Wisconsin *does not* write or provide worker's compensation insurance coverage.

9. Once an employer is required to get a worker's compensation insurance policy, how long does the employer have to keep it?

Quite awhile. Once an employer becomes subject to the Wisconsin Worker's Compensation Act (Act) under s. 102.04(1)(b), Wis. Stats., he or she remains subject to the Act unless the employer withdraws from the provisions of the Act under s. 102.05(1), Wis. Stats.

A subject employer is required to have a worker's compensation policy, as long as he or she has one or more part-time or full-time employees. Even if a subject employer has only 1 part-time employee making less than \$500 per quarter, the employer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--(a calendar year is January through December) before he or she is eligible to withdraw from being subject to the provisions of the Act.

If a subject employer lays off all his or her employees, the employer may drop their worker's compensation insurance while they have no employees, however, the employer remains subject to the Act. Therefore, because the employer has already become subject to the Act, if the employer hires an employee at a later date, the employer must have a worker's compensation insurance policy in place on the date any employee begins working, unless the employer has withdrawn from the Act.

Once a farmer is subject to the Act, the farmer is required to have a worker's compensation policy, as long as he or she has one or more part-time or full-time employees. Even if a subject farmer has only 1 part-time employee, the farmer must maintain the insurance until he or she has gone a full calendar year without employing 6 or more employees on 20 or more days before he or she is eligible to withdraw from being subject to the provisions of the Act.

Corporations cannot withdraw from the provision of the Act. Closely held corporations with no more than 10 stockholders that have no more than 2 corporate officers and no other employees, may elect not to be subject to the Act by completing and filing with the Department a Corporate Officer Option Notice. A corporation with more than two corporate officers or any other employee is not eligible to file a Corporate Officer Option Notice and must obtain and/or maintain a worker's compensation insurance policy.

Call us at (608) 266-3046 if you are not sure whether or not you are subject to the Act or if you are not sure when you are required to have a worker's compensation policy.

10. As an employer, how do I benefit from the Wisconsin Worker's Compensation Act?

You receive benefits that can mean the difference between the success or failure of your business. If one of your employees gets hurt while working for you, you could be sued for damages, medical care, lost wages, and much more. By complying with the law and carrying appropriate worker's compensation insurance, you receive:

- Protection from most law suits brought by an employee because of a work-related illness or injury.
- Fair and prompt delivery of benefits to your employee who is injured on the job.
- Fair adjudication of disputes by a Division of Hearing and Appeals - Office of Worker's Compensation Hearings Administrative Law Judge.
- Fair and standard insurance premium rates approved by the Office of the Commissioner of Insurance.

11. Does my employee benefit from the Worker's Compensation Act?

If your employee does get hurt on the job, he or she can look to the worker's compensation system for prompt payment of benefits and fair adjudication of disputes.

12. I have additional questions regarding the requirement to obtain worker's compensation insurance. Who can I contact?

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.

13. What are some of the key statutes regarding employer liability to carry worker's, compensation. insurance and policy filing requirements under the Wisconsin Statutes?

Chapter 102	Worker's Compensation
Wisconsin Statute 102.03	Conditions of liability.
Wisconsin Statute 102.03(2)	Exclusive remedy, prevents an injured employee from suing an employer who has the required insurance in force at the time a work related injury occurs.
Wisconsin Statute 102.04	Definition of employer, when an employer becomes subject to the Act.
Wisconsin Statute 102.04(1)(c)	Definition of when a farmer becomes subject to the Act.
Wisconsin Statute 102.04(3)	Definition of farming.
Wisconsin Statute 102.05	Election by employer, withdrawal.
Wisconsin Statute 102.05(3)	Election by farmer, withdrawal.
Wisconsin Statute 102.07	Definition of an employee.
Wisconsin Statute 102.07(5)	Definition of a farm employee.
Wisconsin Statute 102.07(8)(b)	Definition of an independent contractor.
Wisconsin Statute 102.075	Election by sole proprietor, partner or member of limited liability company.
Wisconsin Statute 102.076	Election by corporate officer, corporate officer option under the Act.
Wisconsin Statute 102.28(2)	Required insurance, subject employers must be insured by an insurance company authorized to write worker's compensation in Wisconsin.
Wisconsin Statute 102.28(3)	Provision of Alternative Benefits, allows an exemption from the duty to insure religious sect members that qualify and are certified for an exemption.
Wisconsin Statute 102.28(4)	Closure Order, orders an employer to cease operations until the employer complies with s. 102.28(2)(a) by obtaining a worker's compensation insurance policy.
Wisconsin Statute 102.28(5)	Employer's liability.
Wisconsin Statute 102.31	Worker's compensation insurance; policy regulations.
Wisconsin Statute 102.80	Uninsured employers fund.
Wisconsin Statute 102.81	Compensation for injured employee of uninsured employer.
Wisconsin Statute 102.82(1)(2)(a) and (2)(ag)	Uninsured employer payments, reimbursement of the UEF for payments made under s. 102.81 and penalty assessed an uninsured employer for a lapse of worker's compensation insurance coverage.
Wisconsin Statute 102.83	Collection of uninsured employer payments.
Wisconsin Statute 102.835	Levy for delinquent payments.
Wisconsin Statute 102.85 employers who fail to comply with the Act.	Uninsured employers; penalties, penalties and forfeitures for uninsured
DWD 80.62 (Administrative Code)	Uninsured employers fund.
DWD 80.65 (Administrative Code)	Notice of cancellation or termination.
Chapter 626	Rate regulation in worker's compensation insurance
Wisconsin Statute 626.03	Scope of application.
Wisconsin Statute 626.32	Development of rates by bureau.
Wisconsin Statute 626.35	Worker's compensation insurance contracts.

If you have questions regarding the Wisconsin Worker's Compensation Act or the requirements to carry worker's compensation insurance in Wisconsin, please call the Wisconsin Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-3046.